DISABILITY LAW CENTER, INC

Siphoned Away:

How Social Security

Disability and Survivor Benefits

of Youth in Foster Care

Are Being Taken for

the Massachusetts General Fund

A Public Report

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I. Introduction and Executive Summary

The Disability Law Center, Inc. (DLC) is the Commonwealth's Protection and Advocacy ("P&A") system, and a nonprofit organization advocating for human rights, empowerment, and justice for people with disabilities. Our authority under federal law includes monitoring and investigating abuse and neglect, pursuing legislative and administrative advocacy, representing individuals on a range of civil legal matters, and bringing systemic litigation. We also investigate financial exploitation and mismanagement for the Social Security Administration (SSA) and provide technical assistance to legal services and private attorneys handling SSA disability benefits cases. In our capacity as a P&A, DLC issues public policy reports for lawmakers and the public on issues of concern to the disability community. This report is issued solely in that capacity.

There are approximately 1,250 children in foster care for whom the state's Department of Children and Families (DCF) manages Social Security Administration benefits each month.[1] Many youth qualify for SSI benefits due to their own disabilities. Others qualify for Title II benefits based on a parent's wage-earning record, because this parent has retired, become disabled, or passed away. With youth continuously entering and leaving foster care, the actual number of young people affected by DCF's policies regarding SSA benefits is much greater than 1,250.[2]

When SSA monies are released, DCF takes these funds using its powers as a representative payee.[3] DCF then diverts 90% of each month's benefits check, approximately $450,000 to $500,000 per month in total, into the Commonwealth's own coffers, the General

[1] The exact number as indicated by DCF's reply to our public records request, is 1,249. There are approximately 9,190 children in the Massachusetts foster care system as of 2021. Child Trends, "State Level Data for Understanding Child Welfare in the United States," (Massachusetts) available at https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states

[2] According to Child Trends, in 2021 there were 3,329 youth entering foster care for the first time and 4,404 exiting foster care. Child Trends, n.1, supra. For the sake of simplicity, in this paper we have generally used "youth" to encompass all individuals in DCF custody or care, i.e., children or young adults from age 0-22, per G.L. chapter 119.

[3] A representative payee is a person or entity who is designated by SSA to act in a fiduciary capacity for a person who receives benefits, when the beneficiary cannot manage all aspects of their own benefits by reason of age and/or disability. A person or entity must apply to SSA, seeking its authorization to assume this role.

Fund. The remaining money not taken away, 10%, is given to the child and their foster family for spending in a personal needs account (PNA).[4] Children are often unaware that they are eligible for SSA benefits or that money is currently being collected in their name through these programs. In total, approximately ***$5.5 million dollars in SSA benefits is taken by the Commonwealth each year*** from youth experiencing foster care, for the state's own use**.**

This money seized by DCF for the Commonwealth is not specifically used to fund or reimburse DCF for the costs of foster care. Even if it were, the state is already obligated to pay for these costs as a matter of federal and state law and would not be justified in taking foster youth's benefits to meet this pre-existing obligation. Furthermore, we believe that state law does not contemplate or permit charging foster youth for the costs of care by seizing their money.

When DCF siphons away benefits and deposits them into the state's General Fund, children lose access to money that is rightfully theirs, funds that could be saved for their long-term benefit. Practically speaking, they are also penalized for being children in the foster care system with a disability or a disabled or deceased parent. Other children in foster care, without SSA benefits, are not charged for their care, nor do they find their income or assets taken away. DCF does not impose charges for foster care placement on the families from which the child was removed. Only children receiving SSA benefits see their own money taken and diverted into the General Fund. Presumably, this is a matter of convenience for the state. The disability and survivor benefits of children in the foster care system are within easy reach by DCF after it applies to act as the representative payee for youth in foster care. Youth are not told that the state has even applied for benefits in their name, meaning young people are hardly positioned to object. Furthermore, the money does not go towards funding or improving foster care. It can hardly be said to be in the best interests of youth whose assets are taken; they receive the same care and services regardless, as already required by state and federal law. Rather, the arrangement simply adds to the Commonwealth's own assets.[5]

Children and young adults in the foster care system need both personal and economic support as they navigate a difficult system and head into adulthood with few resources or family

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[4] PNA funds are intended to be used for the youth's personal or discretionary expenses that go beyond the ordinary costs of foster care.

[5] When a state agency takes away earned or unearned income from a selective, vulnerable group without informed consent, providing no additional services it is not otherwise obligated to provide, its seizure of income bears more resemblance to taxation than to the provision of government services. Indeed, the contract between EOHHS and the Public Consulting Group (PCG) has spoken plainly of SSA benefits of these youth as state "revenue sources for which the Contractor is responsible." See e.g., Section 2.8., p.36. This seems to have also been the Department's position for many years. See Department of Social Services (DSS) Annual Report, 1985-1987, at 36 (on file with the author), reporting accomplishments including "Increased the Department's revenue by improving collection of SSI and other federal benefits for children in care."

connections. Those who age out and are not reunified with their parent(s) or adopted before the age of 18 are in vulnerable circumstances, as reflected by the personal stories of the young people featured in this report and youth and advocates whom we have interviewed. This is further supported by statistics in virtually every relevant metric,[6] such as their likelihood of experiencing homelessness, obtaining a high school diploma, or attending college. In Massachusetts, among transition-age youth in foster care (age 21):

- 40% do not have stable housing;
- 74% are not enrolled in post-secondary school;
- 32% have not obtained a high school diploma;
- 46% do not have part- or full-time employment;
- 23% have experienced incarceration; and
- 18% are parents.[7]

Seen through an equity lens, the risk factors are even more disturbing. These problems of transitioning to adulthood are only magnified for children who also live with disabilities. In addition, since BIPOC and LGBTQ+ youth are disproportionately overrepresented in the foster care system, and are more likely to experience disability, those groups bear a greater weight from this inequity.[8]

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DCF needs to change its policies to better serve children with disabilities and children receiving disability and Title II Dependent/Survivor's benefits under its care. ***Specifically, DCF must end the practice of taking children's benefits for the benefit of the Commonwealth, and***

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[6] Children in foster care suffer from PTSD at twice the level of U.S. war veterans. Over one-third of these children who age out never graduate from high school, only 3% complete college, less than 50% find employment. 80% experience mental health issues, over one-third face homelessness, and almost 75% of males become incarcerated by age 26. Daniel L. Hatcher, *Stop Foster Care Agencies From Taking Children's Resources*, 71 Florida Law Review Forum 104, 105-106 (2019), available at http://www.floridalawreview.com/wp-content/uploads/Hatcher_Publish.pdf. They also face greater prospects for financial insecurity because of identity theft is common in the foster care system. This is in large part because so many people have access to a child's Social Security number. "Identity theft can have devastating consequences. Former foster youth may face problems finding safe and adequate housing; they may be denied loans for cars and other larger necessities, and they may be denied financial aid and the opportunity to attend college, all as a result of identity theft that occurred while they were in foster care." Melanie Delgado et al., *The Fleecing of Foster Children-How We Confiscate Their Assets and Undermine Their Financial Security*, The Children's Advocacy Institute at the University of San Diego Law School and First Star, i, vi (2011), available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf.

[7] Fostering Youth Transitions: State and National Data to Drive Foster Care Advocacy, Annie E. Casey Foundation, May 2023, available at https://assets.aecf.org/m/resourcedoc/aecf-fosteringyouth-stateprofile-MA.pdf, p. 6.

[8] In Massachusetts, BIPOC youth are less likely to be adopted or placed in guardianship and more likely to age out than their White peers. Exits from foster care into reunification are reported at 39% for White children and 33%, 14%, .1% and 9% for Black, Hispanic/Latinx (of any race), Asian and Multi-Racial youth, respectively. Exits into adoption are reported at 47% for White children, and 30%, 10%, .5% and 9% for Black, Hispanic/Latinx, Asian and Multi-Racial youth, respectively. Exits into guardianship are reported at 52% for White youth, and 24%, 11% and 2% and 8% for Black, Hispanic/Latinx, Asian and Multi-Racial youth, respectively. See DCF FY 2022 Annual Report, https://www.mass.gov/doc/fy-2022/download, p. 21-22

instead conserve all these funds for their transition to adult life and financial independence. After the state siphons away their benefits, youth in the Bay State are left with a diminished chance to succeed as they begin their own independent lives.

Similar state policies in other states have been subjected to widespread criticism from national media[9] along with experts and commentators.[10] As a result, many states have already

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[9] *See e.g.*, Eli Hager and Joseph Shapiro, *State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care*, NPR (Apr. 22, 2021), available at https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-care; Lips, *supra*; Pitcher et al., *supra*; Joseph Shapiro, *Consultants Help States Find And Keep Money That Should Go To Foster Kids*, NPR (Apr. 28, 2021), available at https://www.npr.org/2021/04/28/991503850/consultants-help-states-find-and-keep-money-that-should-go-to-foster-kids; Joseph Shapiro, *Movement Grows For States To Give Back Federal Funds Owed To Foster Children*, NPR (May 3, 2021), available at https://www.npr.org/2021/05/03/992993650/movement-grows-for-states-to-give-back-federal-funds-owed-to-foster-children; Steve Volk and Julie Christie, *Philly took $5 million in foster children's Social Security payments without telling them*, The Philadelphia Inquirer (Dec. 15, 2021), available at https://www.inquirer.com/news/foster-parenting-philadelphia-social-security-payments-20211215.html; Hank Phillippi Ryan, "7Investigates: Foster Children's Money" (May 9, 2019) available at https://whdh.com/7-investigates/hank-investigates/7investigates-foster-childrens-money/; Elizabeth Koh and Samantha J. Gross, *"Mass Has Long Collected Federal Benefits Meant for Children in Its Care. Some Lawmakers Want to Change That"* Boston Globe, July 11, 2023, available at https://www.bostonglobe.com/2023/07/11/metro/state-has-long-collected-federal-benefits-meant-children-its-care-some-lawmakers-want-change-that/; "DCF Should Stop Taking Social Security Benefits From Foster Children. When Children Age Out of Care, They Need the Money," Boston Globe (Editorial), July 12, 2023, available at https://www.bostonglobe.com/2023/07/12/opinion/dcf-foster-care-benefits/?p1=BGSearch_Overlay_Results; Joseph Shapiro, *These Kids Used to Get the Bill for their Own Foster Care. Now That's Changing*, National Public Radio, September 12, 2023, available at https://www.npr.org/2023/09/12/1197610205/foster-care-social-security-benefits For an ongoing compilation of current media coverage see the Children's Law Institute at the University of San Diego Law School's media coverage page, available at https://docs.google.com/document/d/17sAL1JYHtBaWnTqRSpnGGl0Ja15vtkvkE11sAv0AgH8/edit#heading=h.g7tlncsu0gvt

[10] *See e.g.*, Children's Advocacy Institute at the University of San Diego Law School and First Star, *"The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security." (2011), available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf;* Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* (November 23, 2021) available at https://sgp.fas.org/crs/misc/R46975.pdf; Delgado et al., *supra*; Hatcher (2019), *supra*; Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 Cardozo Law Review 1797 (Feb. 2006), available at https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1293&context=all_fac; Daniel L. Hatcher, *Purpose vs. Power:* Parens Patriae *and Agency Self-Interest*, 42 New Mexico Law Review 159 (Spring 2012), available at https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1291&context=all_fac; Katherine M. Krause, *Issues of State Use of Social Security Insurance Beneficiary Funds for Reimbursement of Foster-Care Costs*, 41 Family Law Quarterly 165 (Spring 2007), first page available at https://www.jstor.org/stable/25740601; Ian Marx, *Reforming Foster Care's Social Security Benefits System*, Building the Path Forward For Change in the Child Welfare System, Congressional Coalition on Adoption Institute, July 2021, available at https://s3.amazonaws.com/ccai-website/Building_the_Path_Forward_-_2021_Report.pdf; Emily W. McGill, *Penny Wise, Pound Foolish: Child Welfare Agencies as Social Security Representative Payees for Foster Children*, 58 Case Western Reserve Law Review 961 (Spring 2008), available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1758&context=caselrev; Umar Moulta-Ali et al., *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*, Congressional Research Service 1 (updated Sept. 28, 2012), available at http://congressionalresearch.com/RL33855/document.php#:~:text=An%20estimated%2030%2C000%20children%20receive%20Supplemental%20Security%20Income,from%20families%20with%20low%20incomes%20and%20min

adopted or introduced new policies or legislation to help young people conserve these benefits for adulthood.[11] Massachusetts must follow suit. State legislators have introduced a bill that would, if enacted, require that DCF end this practice and protect the benefits of youth in foster care. It deserves swift passage.

Recommendations:

- **The state legislature should enact legislation, H.157 and S.65, during the current session, to require reform of these practices at DCF.**

- **The Department of Children and Families must act independently to reform these practices, as they are neither required, nor, we contend allowed, by existing state law. Specifically, the agency must:**

    - **Stop the practice of taking SSI benefits and Title II Dependent/Survivor's benefits of youth in foster care;**

    - **Conserve the assets of children receiving SSI benefits, in an Achieving a Better Life Experience (ABLE) account or pooled trust account, for the youth's transition out of foster care (whether through reunification, adoption, or guardianship placement, or through transition to adulthood);**

    - **Conserve the assets of children receiving Title II Dependent/Survivors' benefits, in savings accounts for the youth's transition to adulthood or through other planning tools;**

    - **Promote financial literacy and financial empowerment of youth in foster care as they approach transition age.**

    - **Ensure automatic screening of children in its care to determine if they are eligible for SSI or Title II Dependent/Survivors' benefits;**

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imal%20assets; Jim Moye, *Get Your Hands Out of Their Pockets: The Case Against State Seizure of Foster Children's Social Security Benefits*, 10 Georgetown Journal on Poverty Law & Policy 67 (Winter 2003), first page available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/geojpovlp10&div=8&id=&page=; Glidewell, "Like Taking Candy From a Baby: How the Government Easily and Legally Steals Millions From the Children in Their Care & Why It Needs to Stop," 50 Rutgers Law Review 222 (2022); Mitchell, "Legislative Update: The Strengthening Protections For Social Security Beneficiaries Act Fails To Improve Foster Youth's Awareness of Their Federal Benefits," 42 Child. Legal Rts. J. 52 (2021).

[11] See state reform efforts summarized by the Children's Advocacy Institute at the University of San Diego Law School at https://www.sandiego.edu/cai/advocacy/youth-benefits/state.php

- **Adopt universal screening for youth who are transitioning out of foster care for adult SSI and adult Title II eligibility and provide assistance and support to youth in applying for these benefits;**

- **Notify a child, along with their guardian, attorney, or other interested family member or adult, when DCF has applied to be and has been named their representative payee, and continue providing notice on how the child's benefits are used and conserved by the agency; and**

- **Proactively seek the substitution of responsible family members or supporters to act as representative payees, where possible.**

II. DCF's Practice of Taking SSA Benefits of Youth in Foster Care

Marissa's Story

My name is Marissa; I am 25 years old and I live in Lynn, Massachusetts. Seven years ago, I was 18 years old and homeless. I had what felt like nothing going for myself. No desire to change my circumstances, no energy to do so, and most importantly, no voice.

When I think about the path that I took to get here today, I realized that I had no strategy then. It all started with a desire to do better for myself. I believe that the first step in understanding myself as a person was accepting what I came from. I had a rough upbringing. I went from living with a mentally ill mother, moving every year, and watching the Department of Children and Families taking us one by one. And once it was my turn to be removed, the broken family unit was now a broken foster care system.

But it felt worse, because they had an obligation to protect me. They had an obligation to shape me and provide me with permanency. I moved every year within the 10 years I spent in the foster care system and was moved over 30 times and, aged out at 22 years old. During those 10 years in care, I moved around 33 times.

Between foster homes, group homes, residentials, and hospitals it seemed I was always on the move. I was removed from my mother originally as a Child in Need of Services (now Child Requiring Assistance), given back to her after 30 days in a placement, and removed less than 30 days later for abuse/neglect.

Being in DCF custody was intense and challenging to navigate. Due to the skills I lacked, living in a foster home wasn't much of an option for me. DCF tried a couple of foster homes but I was not used to living in a functional home. I quickly became a program kid. Being forced to live in homes with 15 plus kids was very challenging. Due to the lack of foster homes, that is often what happens to children entering the foster care system.

My life changed when I met my former DCF worker who became my foster parent. I only stayed with her briefly, but the support I received from her, and her family changed my life. Through the battles, institutionalized behaviors, and much more, she walked with me, refusing to give up. I had all the odds stacked against me. Having incarcerated, mentally ill, and drug addicted parents. Spending 10 years in the foster care system, and experiencing a lack of permanency, and a broken support system.

Aging out at 18 was not easy. I had two six months periods of being homeless. It did not have to be so hard.

I was in foster care for about 10 years total, including time before and after I turned 18. Over that time DCF collected my benefits and gave 90% of this to the state. I only learned that I was on SSA benefits around 16 years old and only understood more of the details after I turned 18 and went to the SSA office. Before that, I had only a hazy understanding of what was happening. If that money had been saved for my transition to adulthood, it would have made an enormous difference. I wouldn't have been aging out with next to nothing. I would have had a secure, stable and independent life much sooner and with less pain and less risk.

I hope my story inspires people. In the end, I was able find a stable, secure and good life despite the state taking almost all of my disability benefits. However, I know many people who used to be part of the foster care system whose adult lives have not gone well. It falls to me then, to speak out on their behalf, and to ask that the state save and not take away the benefits of kids in the foster care system.

Marissa *currently serves on two advisory boards, has been involved in local politics, and is a committed advocate for those who, like herself, experienced foster care. She is no longer on benefits and supports herself and strives to share her story with other marginalized communities. Marissa graduated high school in 2016. In 2019, she obtained her driver's license, and bought her first car. She graduated with an Associate's Degree in early childhood education in 2020. In 2021, Marissa continued on to get a certificate in developmental disabilities. In 2021, Marissa flew back to her birth state of Louisiana and brought her grandmother here to become her primary caregiver. The same year, she also became an EMT working in the 911 system, driving the ambulances that once transported her as a patient. In 2022, she graduated with a Bachelor's Degree in Criminal Justice, leased her first car, and obtained her first apartment independently. In 2023, she applied to be a foster parent in the state of Massachusetts. She hopes to apply to nursing school.*

A. Background on the Two Types of Benefits at Issue: SSI and Title II.

Acting as a representative payee, DCF siphons away 90% of both the SSI and Title II benefits of youth in foster care, depositing these benefits into the state's own General Fund.[12]

These two Social Security Administration (SSA) programs may be summarized as follows:

Supplemental Security Income (SSI)	**Title II Dependent/Survivor's Benefits**
-Also known as Title XVI benefits. -Needs-based program. -Available to persons (including children) who meet the program's disability and financial eligibility criteria. -Eligibility requires an individual to have less than $2,000 in countable assets/[13]	-Available to children on the Social Security (FICA tax) wage record of a parent who has died or who receives Social Security Disability Insurance (SSDI) or Retirement Insurance Benefits.[14] -Not needs-based. -Children receive benefits by virtue of being a minor child of the Social Security wage earner -Not based on a child's disability. -Eligibility does not involve any asset limit.

Children may be eligible to receive SSI payments when they have a physical or mental condition(s) that very seriously limits their activities; *and* the condition(s) must have lasted, or be expected to last, at least 1 year or result in death. They must also be from a family with very limited income and assets.

SSA examines whether a child's disability meets the attributes of a particular listed condition or whether child has limitations that are marked in at least two or extreme in at least one of the following areas (called "domains"):

[12] This public report does not discuss veterans' benefits. As of the time DCF replied to our public records request, no youth in foster care were currently receiving them. However, around the country the same policies which result in Social Security benefits being taken have been used to take federal veteran's benefits owed to children. An essay by Ian Marx, a former foster youth, explains how he received no veteran's pension benefits from the service of his mother, who had been a Navy veteran with an honorable discharge. https://imprintnews.org/opinion/washington-protect-foster-youth-benefits/67187 The pending Massachusetts legislation discussed in Section IX of this report would apply both to SSA and to veterans' benefits.

[13] 20 C.F.R. § 416.1205.

[14] These are sometimes known as Retirement, Survivors and Disability Insurance (RSDI) or Old Age, Survivors and Disability Insurance (OASDI) benefits. They end at age 18, unless the youth is still in secondary school, in which case the benefits end at the earlier of age 19 or graduation from high school. 20 C.F.R. § 404.350, 404.352.

- Acquiring and using information;
- Attending and completing tasks;
- Interacting and relating with others;
- Moving about and manipulating objects;
- Caring for themselves; and/or
- Health and well-being.

Two-thirds of child recipients of SSI have an intellectual or developmental disability. As to the remaining recipients, the Kaiser Family Foundation reported the following:

> One in five child SSI enrollees have a physical disability. The most prevalent types of physical disabilities among child SSI enrollees were neurological disorders or loss of vision, speech or hearing, followed by congenital disorders. Less than 10 percent of child SSI enrollees have a mental health disability. Within this category, the most prevalent disability types were mood disorders, followed by organic mental disorders.

See https://www.kff.org/medicaid/issue-brief/supplemental-security-income-for-people-with-disabilities-implications-for-medicaid/ [15]

In 2023, the maximum SSI federal benefit rate (FBR) is $914 per month.[16] The amount may be reduced by one-third, to $609.33, if the youth in foster care lives in a "household of another" and is not paying a pro rata share. In addition to the FBR, the recipient will receive a state supplement program (SSP) benefit. The full amount is $114.36, which is reduced to $87.56 for those in the household of another, and $30.40 for those with shared expenses. The maximum benefit then, is $955.36 ($841 + $114.36).

As noted above, a young person in foster care may receive Title II Dependent/Survivor's benefits as a minor child of a parent who is receiving SSDI or SSA Retirement benefits - - or who has died with insured status under Title II. This amount is often less than the full FBR for SSI. While the average monthly benefit for SSDI is $1483., the amount will be a smaller amount for the dependent, and if there are multiple dependents, the amount will be divided between

[15] For data specifically related to the prevalence of different types of disabilities among youth in foster care, see *State of Alaska v. Z.C.*, amicus brief of national organizations, p. 10-11, available at https://jlc.org/sites/default/files/attachments/2022-06/2022.6.6%20Amicus%20Brief%20-%20FINAL.pdf

[16] https://www.ssa.gov/oact/cola/SSI.html. The maximum amount will be reduced by the beneficiary's countable income, if any. In addition, the SSI benefit amount may be reduced depending on the beneficiary's living arrangement.

them.[17] However, when the foster care youth qualifies for SSI on the basis of their own disability, it is possible that the foster care youth may receive both SSI and Title II Dependent/Survivor's benefits.[18]

Regardless of the type of SSA benefit owed to the youth in foster care, as noted above, until now DCF's practice has been to apply a 10% / 90% split, placing 10% of the benefit into the youth's personal needs account (PNA) and placing the remaining 90% percent into the Commonwealth's General Fund. DCF's policy provides that "No disbursement to the Department will exceed the actual costs of the child's care and maintenance."[19] DCF's contractor, PCG, calculates the amount of funds, and DCF's accounting unit then processes that amount (90% of the individual's benefit) to be passed on to the Commonwealth's General Fund using the state's accounting system (MMARS).

Both SSI and Title II benefits are the property of eligible youth in foster care, to which they are entitled. Yet state foster care agencies, going as far back as the seminal Supreme Court case *Washington State v. Keffeler,*[20] have argued that these benefits cannot be saved separately for children because doing so would quickly cause the recipient of benefits to pass the $2,000 threshold, which would then result in the child being ineligible. This argument has no merit when applied to children receiving Title II Dependent/Survivors' benefits: there is no asset limit that would prevent eligibility. For these children, their money cannot be withheld on the rationale that DCF does not wish for them to lose eligibility.[21]

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[17] When the parent is alive, the dependent benefit is limited to an amount calculated on top of the parent's primary insurance amount (PIA) for dependents (a rough estimate is about 50%) and further limited if other dependents are also eligible. If the parent has died, the parent's benefit amount is included in the family maximum on which eligible survivors can draw, up to the amount allowed for their class of benefit. The amount of the child's benefit will depend on the wage/work history of the parent (which determines the PIA), the number of dependents drawing on the parent's wage record, and whether the parent is alive or deceased.

[18] If the child meets the child disability standard and if the amount of the Title II Dependent/Survivor benefit (less a $20 unearned income disregard) is less than the amount of SSI the child is eligible to receive, then the child could receive SSI in the amount of the difference between the child's SSI maximum payment amount and the countable amount of the Title II benefit - plus the relevant SSP.

[19] Department of Children and Families. SSI and RSDI Child Benefits Policy. https://www.mass.gov/doc/ssi-policy/download p. 2. Note that DCF is also reimbursed for its own costs through federal IV-E administrative funds, which as we understand it, applies to all foster children. In some circumstances, expenses for children on Title II benefits may also be partially reimbursed through federal IV-E maintenance funds through federal matching rules. Child welfare agencies cannot collect IV-E maintenance funds for children receiving SSI.

[20] *Washington State Dept. of Social and Health Servs v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003).

[21] Children in foster care receiving Title II Dependent/Survivors' benefits will also not have a $2,000 asset limit in MassHealth because there is no such limit for individuals under 65 in the community, unless they receive home and community-based services. For this reason, for Title II recipients, DCF can simply save funds for transition using ordinary savings accounts.

As to children receiving SSI, the current $2,000 threshold, first established in 1989, is antiquated,[22] and there have been efforts from Congress to significantly increase the threshold (through the Supplemental Security Income Restoration Act and the Savings Penalty Elimination Act).[23] However, even without a change to the statute, there are assets that can be owned that do not count against the limitation, including, for example, owning a car or a home.[24] More importantly, DCF is able to utilize financial planning tools that will not subject limited long-term savings of SSI recipients to the asset limitation.

B. How DCF May Conserve Benefits

1. Conserving Benefits for SSI Recipients

Representative payees may now assist beneficiaries by establishing ABLE accounts. As Dan Lips, visiting fellow with the Foundation for Research on Equal Opportunity, explained:

> [T]he Achieving a Better Life Experience (ABLE) Act of 2014 allows states to establish tax-free savings options for people who become disabled before age 26. Under federal law, funds used in an ABLE Account can be used to "pay for disability-related expenses," such as "housing, education, transportation, health, prevention and wellness, employment training and support, assistive technology and personal support services," according to the Internal Revenue Service.[[25]]

When DCF redirects children's benefits to the General Fund to meet financial obligations instead of utilizing ABLE accounts, DCF overlooks resources that could be critical for the long-term success of these youth. If instead, DCF regularly used SSA benefits to establish ABLE accounts for beneficiaries, then foster care youth could receive the state-funded care they are entitled to, and still have a "nest egg" of funds to accommodate their unique disability-based goals and needs upon embarking on their independent lives.[26] In Massachusetts, ABLE accounts

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[22] Moulta-Ali et al., *supra*, at 8.
[23] S.2065 - Supplemental Security Income Restoration Act of 2021. This bill, introduced to the Senate in April of 2022, would increase the threshold for individuals to $10,000 and annually adjust the threshold for inflation.
[24] Hatcher (2019), supra, at 108.
[25] See Lips and Keller, "Using Fostering Independence Accounts to Protect Children's Social Security Benefits" (July 12, 2021) available at https://freopp.org/using-fostering-independence-accounts-to-protect-childrens-social-security-benefits-d5850cf35f73 See also 26 USC sec. 529A of the Internal Revenue Code and https://www.ssa.gov/payee/able_accounts.htm
[26] One 2005 study found that on average parents give $38,000 to each child between the ages of 18 and 34 for college tuition, housing costs and other financial assistance, in addition to an extensive range of non-material

are administered by the Massachusetts Educational Financing Authority (MEFA), the state sponsor of Attainable, the ABLE Savings Plan, and their partner, Fidelity Investments. MEFA establishes ABLE savings accounts which are tax-free and are not counted against SSI asset eligibility, for account amounts up to $100,000. This money "[f]osters and supports the independence and quality of life of individuals with disabilities."[27]

ABLE accounts may also be used to save retroactive lump-sum payments of SSI benefits paid to foster care youth.[28] However, since 1996, when lump sums exceed six times the benefit amount, they must be deposited into a dedicated interest-bearing account to be used only for the disability-related needs of beneficiaries. This does not include regular monthly maintenance

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assistance. *Youth Transitioning from Foster Care* (2011), Congressional Research Service, available at https://www.everycrsreport.com/files/20110801_RL34499_3fd3d85cc2aad60613138e4d66501ea48e2541b0.pdf p. 6 (citation omitted). Given that this study is very dated, we should assume that current average amounts of parental support are much higher.

According to the Children's Advocacy Institute at the University of San Diego Law School, one year of SSI/SSDI funds conserved would be equivalent to 2 years of books and supplies for college; 10 months of rent for a one bedroom apartment (national average); 4 years of the value of food otherwise purchased with food stamps; or 9 to 12 month of child care expenses for a 2-4 year old. https://www.sandiego.edu/cai/advocacy/youth-benefits/

[27] *Attainable Savings Plan*[SM], MEFA (website maintained as recently as 2021), available at https://www.mefa.org/save/attainable-savings-plan.

As discussed in Section VIII below, up until recently DCF experienced a procedural barrier related to opening ABLE accounts which has now been lifted. Work between MEFA and DCF has been ongoing for at least a year.

Massachusetts ABLE accounts may be opened online, have no fees, can be used with prepaid or debit cards and allow for deposits of up to $17,000 per year as of 2023 and sometimes more. See https://www.disabilityscoop.com/2022/01/03/irs-raises-limit-for-able-accounts/29640/ and *Debunking ABLE Myths*, The ABLE National Resource Center (website maintained as recently as 2021), available at https://www.ablenrc.org/service-providers/debunking-able-myths/. It is important that DCF work closely with MEFA and SSA as there are some potential pitfalls for youth with ABLE Accounts when the representative payee changes:

> An individual may have only one ABLE Account, but anyone can deposit funds into it for the individual's use for qualified disability-related expenses (QDEs). The representative payee's duty is to be able to show SSA that a beneficiary's Social Security funds, including those deposited into an ABLE Account, were used on the beneficiary in the beneficiary's best interests. The payee's duty is complicated if funds other than SSA funds are deposited into the ABLE Account. In addition, under an SSA rule, when a representative payeeship ends, the payee must return conserved funds to SSA for accounting and redistribution to the beneficiary or a new payee. Returning funds may result in problems or penalties under the IRS rules for ABLE Accounts, so this must be resolved in advance with the local Social Security office. See Social Security - Representative Payee Program - Payee and ABLE Accounts (ssa.gov).

[28] Any large, past-due SSI payment will trigger a "Dedicated Account requirement," meaning the money must be put aside in a separate account and strictly limited to disability-related expenses. Smaller lump sums of benefits that do not trigger the Dedicated Account requirement could be deposited voluntarily into an ABLE Account and spent on anything meeting the definition of a qualified disability-related expense, including basic needs. Unspent portions of a child's regular monthly SSI benefit may be deposited in an ABLE Account as regular monthly benefits and are subject only to the representative payee's duty to spend the funds on the child in the child's best interests. However, benefit amounts that trigger the Dedicated Account rule must be spent on disability-related needs and cannot be spent on basic needs. ABLE Accounts will not work for these.

expenses.[29] For those larger lump sums, which may only be spent on strictly disability-related expenses, an ABLE account may not be a feasible option**.**

In addition to ABLE accounts, there are other options that DCF has available to conserve benefits for youth in its care:

Trust Account	Plans for Achieving Self-Support (PASS)
-Certain special needs or pooled trusts, where money is held and managed by one person or entity (trustee) for the benefit of another (beneficiary), usually someone with a disability. -Not counted against SSI resource limits.[30] -Likely requirements include the beneficiary being under the age of 65, the trust be irrevocable, administered for the sole benefit of the beneficiary, and repayment of medical assistance benefits like Medicaid.[31]	-A program that allows individuals receiving SSI benefits to set aside money and belongings to pay for goods and services that go towards achieving a specific work goal.[32] -Based on a specific, detailed, and closely-followed plan created by the SSI beneficiary and approved by the SSA.[33] -Resources set aside as part of PASS are not counted against SSI resource limits, with no limitations.[34] -Money set aside can go towards things such as trainings or assistive technology devices, as long as they are part of an approved plan.[35]

ABLE accounts are the most flexible approach and the most accessible to beneficiaries, especially for adult beneficiaries. They do come with some technical complications.[36] However, overall, they represent the best option for conserving the benefits of youth in foster care.

[29] 42 U.S.C. sec. 1383(a)(2)(F).
[30] U.S. Soc. Sec. Admin., Program Operations Manual System (POMS) § SI 01120.203(B)(1)(a), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203; 42 U.S.C. § 1382b(e)(5); 42 U.S.C. § 1396p(d)(4)(A).
[31] Special Needs Alliance, Your Special Needs Trust ("SNT") Defined. Available at: https://www.specialneedsalliance.org/the-voice/your-special-needs-trust-snt-defined-2/
[32] POMS 008700.000, available at https://secure.ssa.gov/poms.nsf/lnx/0500870000
[33] *Id.*
[34]POMS 00870.008, available at https://secure.ssa.gov/poms.nsf/lnx/0500870008
[35] Moulta-Ali et al., *supra*, at 29. DCF should also reach out to the Work Incentives Planning and Assistance (WIPA) programs to obtain work and benefits counseling for youth in their care. Pursuant to the Workforce Innovation and Opportunity Act (WIOA), the WIPA programs prioritize transition age youth.
[36] The representative payee needs to be able to show the Social Security Administration exactly how much money came in and how it was spent, which requires accounting beyond simply showing deposits to the ABLE account. The beneficiary needs to be trained on what disbursements from an ABLE account count as an asset, to ensure they do not inadvertently pass the SSI resource limit threshold. ABLE accounts may also have a $17,000 annual limit, depending on whether the beneficiary is working. See generally POMS SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts. Available at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740

Trust accounts are also feasible options, but they are more expensive and more complicated to set up, and more severely limit the beneficiary's access to their funds. However, in having such constrained access to money, they better protect a beneficiary against someone who may want to take advantage of a young person's benefits. Pooled trusts may lower costs significantly.[37] A PASS account is also a feasible option but given the limited and specific constraints on uses of money, only make sense if a person receiving benefits has such specific needs and goals. Furthermore, PASS accounts take time and energy to set up, and a plan needs to be followed exactly as approved, with very little room for flexibility.

2. Conserving Benefits of Title II Recipients

As noted above, Title II benefits can be conserved in ordinary savings accounts.[38] Title II funds, based on the earning record of a parent and their retirement, disability or death, can be a lifeline for the stability of their children.[39]

While the Commonwealth has some programs to assist foster youth financially during and after transition, these options are limited[40] and could be significantly supplemented by the individual's own funds in the form of conserved benefits. In the face of these alternatives, the Commonwealth should cease the practice of collecting benefits of foster care youth for the

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[37] For information on pooled trusts, see https://www.planofma-ri.org/

[38] Of course, there may be circumstances in which other savings tools should be used, including 529 Savings plans, trust accounts, pooled trusts, or possibly G.L. c. 201A, the Massachusetts Uniform Gifts to Minors Act.

[39] U.S. Representative Richard Neal (D-MA First District) lost both parents when he was a teenager. Social Security survivorship benefits allowed him and his two younger sisters to live together with their grandmother, and later an aunt. "Richard Neal is the Policy Shaper," AARP (June 4, 2019) available at https://www.aarp.org/politics-society/government-elections/info-2019/richard-neal-house-ways-means.html

[40] We understand that DCF does make limited transition resources available to some foster care youth, including its Discharge Support Program for youth leaving DCF custody. 110 CMR § 23.07. These funds can be used for first month's rent and similar expenses but are not given as of right and not comparable to the amount of SSA benefits, if conserved in ABLE accounts. We also acknowledge and appreciate the state's tuition waiver and fee assistance program. See https://www.mass.edu/osfa/programs/dcffoster.asp for more information.

DCF further provides Preparing Adolescents for Young Adulthood (PAYA), a life skills curriculum youth in foster care can complete alone or with supervision, and are often incentivized to complete; see: https://www.mass.gov/guides/adolescent-support-programs. However, PAYA may not be sufficient for the needs of youth aging out of foster care. It's unclear when PAYA was most recently updated, but the latest modules available online are from 2005, listing a waterfront 2-bedroom in Boston at $2,500/month (while current prices for similar listings hover closer to $3,500/month). PAYA also only covers very basic information, all of which is necessary and useful, but may not be enough for some young people. For instance, PAYA doesn't describe different kinds of savings accounts, such as 529s or ABLE accounts, or discuss stocks and investments. It also doesn't address government benefits (other than some discussion of government programs related to housing). In interviews we have conducted with adults who aged out of the foster care system, it has been criticized.

benefit of the Commonwealth, and instead use SSI or Title II savings tools, as explained above, to protect youth in its custody.

III. What Have Other Jurisdictions Done to Conserve Children's Benefits?

A number of states and cities have enacted legislation, policy reforms or resolutions related to conserving benefits for children in foster care or have introduced legislation to address the issue.

Arizona: The foster care agency **is expressly prohibited from retaining any amount or percentage of a child's SSA benefits, other benefits, savings or assets.** Funds can be used for unmet needs beyond the obligations of DCS but otherwise must be conserved in ABLE accounts, pooled trusts or similar savings tools.[41]

California: Recently enacted legislation in California provides that ending the state's previous policy of utilizing federal benefits of foster youth would "meet an urgent need for a population at high risk of homelessness" and that **no funds will be used for this purpose in the future and that these funds must be conserved**.[42]

Oregon: Use of a child's SSA benefits to pay for the cost of foster care is **prohibited**.

New Mexico: Use of a child's SSA benefits to pay for the cost of foster care is **prohibited**.

Maryland: When a child reaches age 14 a **minimum percentage** of the child's benefits will **not be used to reimburse the state** for costs of care, starting at 40% for age 14 and 100% for age 18+. The department monitors any federal asset and resource limits and conserves or uses funds in several possible ways: PASS

[41] 2023 Arizona House Bill No. 2559, now enacted and signed by the Governor (June 19, 2023), amending Section 8-453 of the Arizona Revised Statutes.
[42] See section 13756 in legislation enrolled by the California legislature and now awaiting the Governor's signature, available at https://legiscan.com/CA/text/AB1512/2023

accounts, 529A plans, individual development accounts[43], special needs trust, and dedicated accounts for back payments as necessary.[44]

Hawai'i: The state adopted a resolution requesting that **the department deposit social security payments** for foster children into **savings accounts** which children may access when they return to their families, are adopted, or age out of foster care.[45]

Nebraska: A child's assets may be deposited in a checking account, invested in US bonds, or deposited in a savings account insured by the US government. **All income** received from investment of assets will be **credited to the child**.[46]

Illinois: The Department shall set up and administer no-cost, interest-bearing accounts for children the department is legally responsible for and who are eligible for Veteran's benefits, Social Security benefits, SSI, Railroad, and other related payments, with interest earned by each account credited to the account unless disbursed. The Department is additionally instructed to establish **standards for the disbursement of funds**, which must be approved by the agency's Guardianship Administrator. When serving as representative payee for a child on SSI, the department shall ensure that when a youth turns 14 and until the department is no longer representative payee a **minimum percentage** of SSI benefits are conserved: at least 40% for age 14, to 100% from age 18. Benefits may be used or conserved by: establishing a PASS account, establishing a 529 plan, establishing an Individual Development account, establishing an ABLE account, or establishing a special needs trust.[47]

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[43] For information on individual development accounts (IDAs), see: https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830665, https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830670 https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130678, and https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130679

[44] Md. Code, Fam. Law § 5-527.1

[45] SCR51, Requesting the Department of Human Services to Immediately Cease Intercepting Social Security Payments for Children in Foster Care, available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SCR&billnumber=51&year=2023 The state of the law in Hawai'i is reportedly unsettled as of the summer of 2023.

[46] Nebraska Legislative Resolution 198, available at https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LR198.pdf

[47] 20 ILCS 505, Children and Family Services Act, available at https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=242&ChapterID=5 Section 529 of the Internal Revenue Code, 26 U.S.C. sec. 529, provides for college savings plans. Some statutes have utilized section 529 accounts for

Connecticut: Connecticut's **DCF must deposit a child's Social Security benefit payments into a trust account** maintained for the purpose of receiving such deposits. Guidelines must be established concerning the management and oversight of such accounts along with permissible and impermissible withdrawals from these accounts by children or guardians. **No SSDI benefit** received by a child in department care/custody shall be used to **offset the cost of their care**.[48]

Washington, D.C.: The Department **cannot use Social Security benefits to reimburse the district** for any costs associated with the child's care. When acting as a child's representative payee or fiduciary, the department will monitor federal asset limits and **conserve benefits** with several potential methods: establishing a PASS account, establishing a 529A plan account, establishing an individual development account, establishing a special needs trust (or joining a pooled special needs trust), or opening a dedicated account as required.[49]

Philadelphia, Pennsylvania (local): When the Department serves as representative payee for a child, it uses or conserves the benefits in the child's interests, including using benefits for services not otherwise provided for by the department or covered by health insurance, or **conserving benefits for reasonably foreseeable future needs**. The child's benefits will **not be used to reimburse the city or the county** for the costs of their care. The department will additionally monitor asset and resource limits and use or conserve benefits in a way that avoids violating these resource limits, including conserving funds through establishing individual financial accounts in accordance with federal regulations.[50]

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foster children under programs providing fixed deposits of college savings for each child in the state. See e.g., https://www.myalfondgrant.org/ (Maine). In Massachusetts, Section 529 college savings plans could certainly be used for Title II recipients. Their utility for use as a savings vehicle for SSI recipients, referenced in Illinois, is beyond the scope of this report but merits further exploration.

[48] Substitute for S.B. No. 2, An Act Expanding Preschool and Mental and Behavioral Services for Children, enacted as P.L. 22-81 and signed by the Governor on May 24, 2022, available at https://www.cga.ct.gov/2022/act/Pa/pdf/2022PA-00081-R00SB-00002-PA.PDF

[49] Preserving Our Kids' Equity Through Trusts (POKETT) Amendment Act of 2022, available at https://trackbill.com/bill/district-of-columbia-bill-857-preserving-our-kids-equity-through-trusts-pokett-amendment-act-of-2022/2264800/

[50] Philadelphia City Council, Councilmember Gym Announces Legislation to Give Back More Than $1 Million Annually to Youth in Foster Care, March 17, 2022, available at https://phlcouncil.com/councilmember-gym-announces-legislation-to-give-back-more-than-1-million-annually-to-youth-in-foster-care/

Los Angeles, California (local): The Department must ensure that a no-cost, interest bearing bank account is created for each eligible youth in care to **deposit SSA benefits** in that they can **access upon exit from care**, such as a CalABLE account. Procedures must be established to disburse the balance of the account to the youth upon their exit from care.[51]

New York City, New York (local): ACS set out an internal agency plan to **establish individual, Social Security-compliant accounts** for children eligible for SSI and Title II benefits, up to the legal limit where applicable.[52]

DCF should adopt processes to conserve all Social Security benefits children in its custody. The agency should not wait until a youth turns 14 to begin saving their benefits, but rather should do so immediately, regardless of the child's age. For children in foster care, DCF acts as a proxy for parents who otherwise would have retained custody. Ideally, parents of children with disabilities should obtain ABLE accounts at the earliest possible time to save for their child's transition to adulthood. DCF should hold itself to no lesser standard.[53]

IV. DCF's Practices Conflict with Current Massachusetts Law

Currently, DCF's sub-regulatory policy, "SSI and RSDI Child Benefits Policy,"[54] has detailed provisions concerning the management of SSA benefits of youth in foster care, but none address the child's interest in conserving benefits for the transition to adulthood. The policy does not mention ABLE accounts and discusses the SSI asset limit only in the context of the

[51] Revised Motion by Supervisors Hilda L. Solis and Sheila Kuehl, *Social Security Benefits for Youth in Foster Care*, available at https://file.lacounty.gov/SDSInter/bos/supdocs/159977.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=; Joseph Shapiro, *Los Angeles County Moves To Get More Money Into The Hands Of Foster Youth*, July 16 2021, available at https://www.npr.org/2021/07/16/1016996802/los-angeles-county-moves-to-get-more-money-into-the-hands-of-foster-youth.

[52] Administration for Children's Services Announces Plan to Ensure Youth in Foster Care Who Are Eligible for Social Security Income Have Benefits in Place & Can Receive Those Funds, available at https://www.nyc.gov/assets/acs/pdf/PressReleases/2021/SocialSecurityIncome.pdf

[53] Another option would be for DCF to cap its own compensation from SSA benefits at 33% of the benefit amount and to retain the balance as short and long-term savings for the foster care youth. See Ian Marx, *Reforming Foster Care's Social Security Benefits System*, Building the Path Forward For Change in the Child Welfare System, Congressional Coalition on Adoption Institute, July 2021, available at https://s3.amazonaws.com/ccai-website/Building_the_Path_Forward_-_2021_Report.pdf, p. 36.

[54] Policy # 84-007, available at https://www.mass.gov/doc/ssi-policy/download

need to "spend down" assets to avoid breaching the limit. No doubt this is in large part because there are fewer benefits to conserve after the foster care child's benefits are applied to DCF's own financial obligations.[55] While recent updates to DCF's regulations provide that DCF is *permitted* to take up to 90 percent of a child's Social Security benefit payment[56], in practice, the Department has been diverting the full 90% of a child's benefits. While a child receives the remaining 10% for their own use, the agency encourages social workers to spend down these funds to ensure that the asset limit is not reached. This practice runs against the spirit of the law, which places upon the Department the financial responsibility for a child's care and a fiduciary obligation to protect the child's interests.

However, it appears to conflict with the letter of the law as well. Subsection (a) of Massachusetts General Laws Chapter 119, section 23 states, "[t]he department shall have the responsibility, including financial responsibility, for providing foster care for children ***through its own resources***[57] or by use of appropriate voluntary agencies, according to the rules and regulations of the department" (emphasis added).[58] This language is significant in two respects. First, it assigns to DCF the "financial responsibility" for paying for the cost of foster care, an obligation it also already carries under federal law. Second, by specifying the sources of revenue

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[55] DCF pays a stipend of approximately $987.00 per month to a foster parent for care of a foster child 13 years or older, not including a clothing allowance and other incidental expenses.

[56] Previous iterations of the regulation established that DCF would take 90% of a child's benefit payment to reimburse the Department for the cost of that child's care, however, this language has since been changed to state that the department "may retain 90% of the child's benefits as reimbursement for the cost of the child's care." 110 CMR § 4.05.

[57] As one of its expenses for foster care, DCF provides daily stipends to foster parents—currently, for children 13 years and over, the payment is $32.90 daily, or $987 per month. See Mass.gov, Resources for Foster Parents. Available at: https://www.mass.gov/service-details/resources-for-foster-parents. For children 6-12 years of age, the daily amount is 31.49 or $944.70 per month. These costs are disconnected from retained SSA benefits, since DCF itself does not compensate itself, but rather forwards 90% of the SSI benefits into the General Funds, where these monies may be used for any purpose.

[58] M.G.L c. 119, § 23(a). https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section23 Compare this, for example, to Arizona's statute, which previously provided that its department "may serve as representative payee..." and "[m]ay use these monies to defray the cost of care and services expended by the department..." Section 8-453, subsection (D) Arizona Revised Statutes (now repeated by 2023 Arizona House Bill 2559, expressly prohibiting such practices). Another example is Nebraska's statute, which provides that its child welfare agency "shall take custody of and exercise general control over assets owned by children under the charge of the department." (Even operating under this language, Nebraska's child welfare agency sets aside $1,000 from the benefits of each foster child to forward to them at age 19 when they leave the system. https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-among-states-claiming-social-security-owed-to-foster-kids/article_faf5d4f6-c306-11eb-a542-d705c371d6f2.html.)

Massachusetts appellate courts have been very clear that "an administrative agency has no authority to promulgate rules or regulations that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created." *Tartarini v. D.M.R.*, 82 Mass. App. Ct. 217, 222 (2012), quoting *Massachusetts Mun. Wholesale Elec. Co. v. Energy Facilities Siting Council*, 441 Mass. 183, 194 (1991).

permitted to satisfy this obligation -- DCF's "own resources" or "appropriate voluntary agencies" without more expansive language (e.g., "such as" or "including") — it is reasonable to assume that other potential sources of revenue were *not* contemplated or authorized by the legislature. If the legislature had intended to direct the agency to collect money from other sources, it was capable of drafting language to that effect. The same statute later sets out where the Commonwealth may reimburse itself specifically from the funds of the child, including, for example, "hav[ing] the right of reimbursement from whatever resources may exist in the estate of the child" when paying for funeral expenses of a deceased child.[59]

The plain language of § 23 indicates that DCF has been assigned total financial responsibility for children in its care, except for narrow exceptions. However, DCF's current regulations 110 C.M.R. § 4.00, and specifically 4.05(2), contradict this statutory language. 4.05(2) describes how, when DCF becomes the representative payee of a child in its care, it may absorb the vast majority of the child's Social Security benefits -- 90% -- as "as reimbursement for the cost of the child's care."[60] DCF's regulation imposes a $2,000 cap on accumulation of personal needs allowance (PNA) funds. This PNA limit applies even if the funds are from Title II Dependent/Survivors' benefits or the Veterans' Administration benefits, which are not subject to a federal $2,000 cap.[61] Should the PNA exceed $2,000, DCF's regulation allows the department to use 100% of the benefits to reimburse itself.[62] DCF current regulations and policies contradict the statutory mandate under G.L c. 119, § 23(a) to bear financial responsibility for youth in foster care.

Finally, DCF's policy of taking Social Security benefits appears to conflict with the agency's own legal obligation to make "reasonable efforts" to help the child achieve a

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[59] M.G.L c. 119, § 23(d).
With exceptions for funeral expenses and collection from the estate of a deceased child, the expenses of social services programs or medical or educational services provided to a minor are ordinarily provided by the state without charge or paid by a financially responsible parent, and of course, not paid by the child themselves. Moreover, in the ordinary course, a child lacks the capacity to enter into financial contracts for goods or services. *Frye v. Yasi*, 327 Mass. 724 (1951). By contrast, charges for care may be imposed on adults who seeks and receives residential services from an agency of the Commonwealth. See e.g., 115 CMR 3.05 (Charges for care in DDS residential community-based programs). However, aside from a minor lacking the capacity to contract, foster care is imposed at the election of the state, upon the child, based on its assessment of the child's best interests. It is distinct then, from social services programs which are freely chosen by the participant. See e.g., 115 CMR § 5.04(6) (setting forth a human right of DDS participants to decline any service or support).

[60] 110 C.M.R. § 4.05(2)

[61] DCF states that it is not adhering to this regulation in the case of Title II recipients.

[62] *Id.*

permanency goal. Once DCF is granted temporary custody of a child, DCF becomes legally obligated to make reasonable efforts to "mak[e] it 'possible for the child to return safely to [their] parent [.]" *Care and Protection of Walt*, 478 Mass. 212, 221 (2017), quoting from G. L. c. 119, § 29C (further citations omitted). If a child cannot be reunified with their parent, the Department must make reasonable efforts to achieve another permanency plan that is approved by the Court, whether that be adoption, guardianship or another planned permanent living arrangement ("APPLA"). G. L. c. 119, §§ 29B(d) & 29C. A youth with a goal of APPLA ages out of DCF's care and custody without a legal connection to a permanent family. In that situation, it is the Department's responsibility to prepare the youth to live independently. A failure by DCF to conserve a youth's federal benefits likely also constitutes a failure to make reasonable efforts toward the youth's permanency plan of living independently, in violation of G.L. c. 119, §§ 29B(d) & 29C.

V. Risks For Youth Aging Out of Foster Care

The transition to adulthood is often a difficult time for any young person as they navigate the various challenges of and barriers to living independently. For youth with disabilities, this transition can be even more fraught with uncertainty. They may need additional disability-related supports while simultaneously receiving fewer resources as they age out of foster care.[63]

Reporting from the Marshall Project and NPR detailed the harrowing stories of six children raised in foster care who had their benefits taken without their knowledge.[64] Jaime, a talented musician who played classical cello, experienced the murder of his mother by his father. Since this deeply traumatic event, not only did he lose his cello and could not afford another one, but "he could hardly afford to eat."[65] Yet Alaska's Office of Children's Services had taken over $20,000 in Dependent/Survivor's benefits from him. Jaime, along with the five other youth from Alaska, were involved in a class action lawsuit against OCS "demanding that the state pay their Social Security money back;" the trial court ruled that OCS was violating the state constitutional

[63] McCauley, Differential risks: How disability shapes risk in the transition to adulthood for youth who age out of foster care (2021), p. 1
[64] Hager and Shapiro, *supra.*
[65] *Id.*

due process rights of youth in foster care by not giving adequate notice when the state takes over as a representative payee.[66] The case is now on appeal.[67]

Too often, young adults who age out of foster care in Massachusetts experience little support from DCF. The Massachusetts Law Reform Institute's report on DCF's foster care system highlights the voices of foster care-involved youth and parents.[68] Tyisha's experience with DCF was one of trauma and hostility; she remembers being taken away from her mother with no explanation and described her placement as a "detention center in the middle of the woods" from which she ran away many times. Her association with DCF was so negative that at 17, as early as possible, she signed out of DCF care foregoing services, despite being homeless and pregnant. Miranda's experience with DCF was similarly traumatic; DCF never wanted to give her therapy, just medication, to treat her ADHD. She attempted suicide three times while in foster care, and lost a pregnancy, but she never had anyone to talk to and DCF never inquired about the lost pregnancy. Miranda attempted to stay in DCF custody beyond age 18, but because she hadn't finished high school and did not want to enter DCF's job training program—instead, she wanted to get her GED, but DCF denied her request. Miranda eventually got her GED, on her own, at 33.

Children who age out of foster care are especially vulnerable, particularly children who are at the intersection of other marginalized identities. Jodi Rosenbaum is founder and CEO of More Than Words, a Massachusetts "nonprofit social enterprise that empowers youth who are in the foster care system, court involved, homeless, or out of school to take charge of their lives by taking charge of a business."[69] On October 25, 2021, she submitted written public testimony to the Joint Committee on Children, Families, and Persons with Disabilities, in support of S.85/H.248, legislation "to provide residential or custodial services to ensure positive transitions

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[66] Macías. Judge Curbs Alaska's Practice of Claiming Foster Youth's Federal Benefits. https://imprintnews.org/top-stories/judge-curbs-alaskas-practice-of-claiming-foster-youths-federal-benefits/61491. *See also* Brief of Appellees, State of Alaska v. Z.C., available at: https://jlc.org/sites/default/files/attachments/2023-01/2022.8.22%20Appellee%27s%20Brief.pdf.

[67] *Id. State of Alaska et. al. c. Z.C.*, pending decision before the Alaska Supreme Court (S-18249, consolidated with S-18259), docket available at https://appellate-records.courts.alaska.gov/CMSPublic/Case/Docket?q=w6sobc/DATfEoWTAKIky/w==%27

[68] Elsen, Esposito. Family Voices. Insights about prevention services from families and youth directly affected by the Massachusetts Child Welfare system. Massachusetts Law Reform Institute Child Welfare Reform Project May 9, 2022. Available at: https://mlri.org/publications/family-voices/

[69] More Than Words (2018), available at https://mtwyouth.org/.

for at-risk youths."[70] To accompany this, she included compelling testimony from Jacob and Janaya, former foster children who were helped by More Than Words.[71]

In Jacob's testimony, he described how he would have aged out of foster care, but he signed on to remain with DCF when he was 18. Yet, when only a couple months later he was arrested for the first time in his life, DCF cut off all services. He was at perilous risk of experiencing homelessness and had to couch surf. Jacob stated that "[b]etween 30-50% of our homeless youth population is coming straight out of DCF. And we know that nationally, nearly 80% of adults in prison were once in foster care."[72] Janaya, in her testimony, details how she was also at serious risk of becoming homeless when she turned 18 because DCF was anxious to close her case. With the help of More Than Words, she was able to continue pursuing her goals and is become a college student.[73]

Children in foster care need support to prepare for years of young adulthood, a safety net for when they begin independent living, something that so many youth who have never been in foster care take for granted. This problem is even more acute for young people with disabilities.

A. Accounting for BIPOC Youth and LGBTQ Youth in Foster Care: The Disproportionate Impact and Risks During Transition to Adulthood

Children exiting foster care overall are vulnerable to several adverse risks, including homelessness, incarceration, substance use, and pregnancy.[74] But for children who are marginalized--through race, ethnicity, ability, and sexuality, for example-- risks of adverse outcomes are compounded. Youth who are multiply marginalized need a system that will support them through any difficulties that they might face. Both nationally and in Massachusetts, race factors into the outcomes that children experience when transitioning out of foster care. Nationally, Black and Native American children have been overrepresented in the foster care population compared to the general population, while White children tend to be

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[70] *MA H248 | 2021-2022 | 192nd General Court*, Legiscan, available at https://legiscan.com/MA/bill/H248/2021.
[71] Jodi Rosenbaum Tillinger, *Testimony in support of S85/H248*, More Than Words (Oct. 25, 2021) (on file with the author).
[72] Jacob, Testimony in support of S85/H248, More Than Words (Oct. 25, 2021) (on file with the author).
[73] Janaya, Testimony in support of S85/H248, More Than Words (Oct. 25, 2021) (on file with the author). For additional adverse outcomes for foster care youth, including health and behavioral health issues, see the Social Security Advisory Board Statement available at https://www.ssa.gov/oact/ssir/SSI14/SSAB_Statement.html, p. 3-4.
[74] McCauley, Differential risks: How disability shapes risk in the transition to adulthood for youth who age out of foster care (2021), p. 1

underrepresented.[75] Massachusetts similarly reflects this disproportionality. In a recent report put out by DCF, in the 2022 fiscal year, 32% of children under age 18 in department custody were Latinx, and 14% were Black[76], compared to the general population of Massachusetts children, which is 19.8% Latinx and 9% Black.[77] LGBTQ youth are also overrepresented in foster care across the country.[78] In addition, Black and Native children in foster care tend to experience greater placement instability in foster care, with more frequent reentry into the system and more disruptions in placement.[79] For example, Massachusetts data on the number of placement moves per 1,000 days in foster care indicate children of color move much more frequently. White children are reported as having 5.75 placement moves, while Black and Hispanic/Latinx youth have 7.89 and 10.02 moves, respectively.[80]

Black children, whether or not in foster care, disproportionately are not receiving benefits for which they are eligible. Social Security data shows 46% of non-Black children who have lost a parent are receiving Title II survivor benefits; for Black children, that number is 26%.[81] While we do not have exact data on how many children in Massachusetts have disabilities and are persons of color; have disabilities and are members of the LGBTQ community, or are in all three communities, it is reasonable to believe that there is significant overlap within these groups. When we discuss concerns that impact youth with disabilities, they will also impact youth of color and LGBTQ youth in foster care. BIPOC youth and LGBTQ youth face

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[75] Child Welfare Practice to Address Racial Disproportionality and Disparity, page 3. Latinx children have been underrepresented nationally in foster care, however a recent study noted that Latinx children were overrepresented in foster care in 20 states.

[76] DCF 2022 FY report p xi.

[77] Children's Bureau, An Office of the Administration for Children & Families. Child Welfare Outcomes Report Data. Available at: https://cwoutcomes.acf.hhs.gov/cwodatasite/population/index

[78] LGBTQ Youth In the Massachusetts Child Welfare System, https://www.mass.gov/doc/commission-report-on-dcf/download. p. 9.

[79] Krista Thomas & Charlotte Halbert, *Transforming Child Welfare: Prioritizing Prevention, Racial Equity, and Advancing Child and Family Well-Being,* National Council on Family Relations (2021), accessed through https://www.ncfr.org/system/files/2021-04/Transforming_Child_Welfare_Brief_w_ExSum_0421.pdf

[80] See DCF FY 2022 Annual Report, https://www.mass.gov/doc/fy-2022/download, p. 18.

[81] https://www.cbsnews.com/news/social-security-survivor-benefits-black-children-parents/. A recent article in The Hill notes that Black children have a far greater likelihood of losing one or both parents (almost 10% compared with 3.3 %, 1.4% and 4.2% for white, Asian and Hispanic (of any race) children, respectively. However, in receiving Title II benefits, they appear to be grossly underrepresented for a number of reasons, with nearly 1 million Black children in the country who were orphaned, but only 260,000 receiving Title II survivor benefits. See https://thehill.com/opinion/finance/3945944-number-of-orphaned-children-in-the-black-community-is-growing-rapidly-congress-must-help/

significant risks in the foster care system, and when transitioning out of the system.[82] A recent report on LGBTQ youth in the Massachusetts foster care system found that LGBTQ youth in foster care had poor permanency outcomes, difficulty with transitioning to adulthood, and delays in accessing medically necessary care.[83]

Poor outcomes like homelessness and risk of incarceration are terrible for the young people who live through those experiences. These outcomes are also detrimental to state government. While states may take beneficiaries' money to pay itself for foster care and other state obligations, it costs the state more in the long run to not provide these youth with proper support, especially for those who age out of care. Melanie Delgado, Staff Attorney at the Children's Advocacy Institute at the University of San Diego School of Law, and fellow authors, described this as follows:

> Moreover, the poor outcomes of foster youth are costly to states. One analysis estimated that the cost of each annual cohort of youth aging out of the foster care system is approximately $5.7 billion; these costs come in the form of lost earnings (and thus lost revenues), criminal justice system expenditures, and unplanned pregnancy expenses such as government cash assistance and health programs. On an individual level, each foster youth who drops out of high school costs the public sector $209,100 over a lifetime due to lost wages and greater need for public support services. [[84]]

Establishing a financial safety net for foster care youth who age out of DCF services provides those youth with support that parents would otherwise provide: shelter, stability, vocational or college education, health needs, transportation, and funds for addressing emergencies and unexpected expenses.

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[82] American Bar Association. Better Outcomes for Older Youth of Color in Foster Care, available at: https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2015/better-outcomes-older-youth-color-foster-care/

[83] Massachusetts Commission on Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth, *LGBTQ Youth in the Massachusetts Child Welfare System* (2021), accessed through https://www.mass.gov/doc/commission-report-on-dcf/download.

[84] Melanie Delgado et al., *supra*, at 4.

VI. Screening for Benefit Eligibility and Notifying Youth and their Families

Lazara's Story

I was put into foster care at age 3 after a traumatic incident at home. At age 5, I was adopted by my dad's parents. That only lasted four years. At age 9, I was put back into DCF care. I didn't have any stable placement, but bounced around between group homes, specialized facilities, and a couple of overnights with families. During my time in DCF care, I was diagnosed with PTSD (which has since been classified as C-PTSD), RAD (reactive attachment disorder), OCD, and an emerging personality disorder. Many of my health difficulties were compounded by the trauma of the foster care system, and the failure to provide me adequate treatment or support during my time in foster care. I had trauma therapy while living with my adoptive parents, but lost that support once I re-entered DCF care.

While in DCF care, I never got Social Security benefits, but my brother did, and I remember being jealous of his payments, wondering why he had access to money and I didn't. At age 19, I got arrested while staying at a group home. Suddenly, DCF told me that meant I had aged out, and I couldn't receive their support any more. I lost both my housing and DCF support at once. I remember a DCF social worker suggested I apply for Social Security, but didn't provide any support in the application.

Once I lost my housing, I had nowhere to go. I started living in my car, since I had no other options. I got addicted to drugs. I needed help. But slowly, surely, I managed to get back on my feet. I went to an office to apply for food stamps, and while there, asked for their help in applying for Social Security benefits. When I applied, the people helping me told me I had actually been eligible for years, since the documents I provided were from when I was 9 and 12 years old. I realized DCF could have helped me apply while I was in their care, and I could have had some resources for during and after my time with DCF, but I was never screened for eligibility. I had to figure that out on my own, after aging out, when I most desperately needed help. At first, my application was denied, but I appealed, and got benefits within six months, a record time. Within three months of getting benefits, I got myself to rehab, and I got sober. I reconnected with my adoptive parents, who took me back in under the condition I work or go to school. I did both.

I started with certificate programs and a job at a daycare. That, combined with my personal experience, got me interested in early education, and I went to a state college to study early education and social policy. While there, I studied abroad and learned about different systems of social support, and became invested in fighting for policy change. This summer, I'm going to a program abroad to begin working towards my Master's in Social Work. I want to learn how to help people who are struggling—the kind of help I didn't get as a kid—and advocate for policy changes to support the most vulnerable in our society. I support this bill so that no one has to struggle like I did, and people in foster care who could qualify for benefits are able to be screened and access resources that could change their lives.

A. Screening: Making Sure No One Falls Through the Cracks

Screening children in foster care to see if they are eligible for benefits is another crucial aspect of planning for their well-being, and the need for improved screening is reflected in DLC's recommendations. Anecdotal reports DLC has received from youth who have aged out of foster care indicate that DCF does not engage effectively in universal screening practices. DCF's annual report from the 2022 fiscal year unfortunately does not indicate a full count of children with SSI and/or Title II benefits, or of children who are disabled. A 2021 national study of youth in foster care using information from the National Data Archive on Child Abuse and Neglect found that nearly 45% of youth in their sample reported having some kind of disability.[85] With just over 700 out of approximately 9,190 children in DCF custody receiving SSI benefits in 2022, a much smaller percentage (7.6%), this suggests the number of disabled children in Massachusetts who could be eligible for SSI benefits is higher than the number who actually receive them.[86]

While some have raised concerns about the potential for misdiagnosis stemming from increased screening, especially for youth of color,[87] such concerns do not outweigh the merits of increased benefits for qualified youth. Research has suggested that youth of color are underdiagnosed with mood disorders, such as anxiety and depression, and over-diagnosed with

[85] McCauley, Differential risks: How disability shapes risk in the transition to adulthood for youth who age out of foster care (2021), p. 4

[86] The number of children receiving SSI in 2022 was obtained in DCF's response to a public records request made by DLC (available upon request).

A 2021 Congressional Research Services study found that only 7.4% of children served in foster case for 6 months or more were receiving SSI/Social Security benefits. This number was 7.6%, as compared to 9.6%, 10.1%, 10.4%, 11.5%, 13.4%, 15%, 18.9%, and 23.9% in North Carolina, Vermont, Connecticut, New Mexico, Tennessee, Maine, New Hampshire and Delaware, respectively. See https://sgp.fas.org/crs/misc/R46975.pdf, Table B-1 pp. 47-48. California previously estimated that 15-20% of youth aging out of its foster care system were eligible for SSI benefits. Children's Advocacy Institute at the University of San Diego Law School and First Star, *"The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security." (2011), available at* http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf, p. 5.

According to Child Trend, nationally the number of children in foster care with a special health care need is about 24%, with Massachusetts reporting smaller percentages. See text and Appendix B, https://cms.childtrends.org/wp-content/uploads/2020/12/CYSHCN_ChildTrends_Dec20-2.pdf While this indicator is not equivalent to SSI eligibility, it is nonetheless relevant, In addition, the Children's Advocacy Institute at the University of San Diego Law School has found nationally that the percentage of children in foster care receiving SSI, *as compared to the number receiving SSA benefits generally*, is about 80-90%, as compared to only about 50% in Massachusetts. This is another possible indicator of inadequate screening practices.

[87] Philadelphia Mayor Letter re: Bill No. 220239, September 28, 2022, on file with author. The Philadelphia bill was returned without signature more than ten days from presentation, so the ordinance took effect as if signed by the Mayor. http://files.amlegal.com/pdffiles/Philadelphia/220239.pdf

conduct or behavior-related disorders, especially those involving hostility or aggression.[88] However, the solution is not to avoid screening altogether, which can deny qualified youth important support, both from government benefits and mental health treatment. The solution is, instead, to raise awareness of misdiagnosis and promote culturally sensitive diagnostic metrics to ensure youth of color get the support they need. Otherwise, it can often be harder for youth of color to access disability-based benefits due to lack of access to health care[89] and an increased likelihood of being referred to the criminal justice system as opposed to treatment-oriented services.[90]

Furthermore, increased screenings for Social Security benefits will not necessarily lead to increased diagnoses. When assessing individuals' eligibility for disability-based benefits, SSA examines disability and medical history longitudinally; short-term disabilities do not qualify. Therefore, behaviors or symptoms that are an acute short-term response to the distress of entering the foster care system are unlikely to fit the SSA's definition of disability. Furthermore, the SSA does regular continuing disability reviews, generally more frequently for younger beneficiaries,[91] further protecting against misdiagnosis resulting from short-term behaviors.

Eligibility for benefits as a minor is not inconsistent with later moving off benefits into competitive employment as an adult. Receiving benefits as a youth provides an important financial safety net that can help ameliorate some of the increased risks youth face when aging out of care, such as higher rates of experiencing homelessness and substance abuse disorders, giving individuals a more stable foundation to seek employment and educational opportunities. Furthermore, the Social Security program provides incentives to move beneficiaries towards financial independence, employment, such as counting only half the gross monthly wages to

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[88] Russel, Misdiagnosis of Mood Disorders in Teenagers of Color, January 12, 2022, available at: https://childmind.org/article/misdiagnosis-of-mood-disorders-in-teenagers-of-color/#:~:text=the%20long%20term.-,Misdiagnosis%20among%20kids%20of%20color,their%20symptoms%20are%20the%20same; Opara et. al., Mental Health Burden among Black Adolescents: The Need for Better Assessment, Diagnosis and Treatment Engagement, Soc. Work Ment. Health. 2021; 19(2): 88–104., January 1 2022, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8262091/; Richtel, 'Disruptive,' or Depressed? Psychiatrists Reach Out to Teens of Color, December 13, 2022, available at: https://www.nytimes.com/2022/12/13/health/adolescents-mental-health-psychiatry.html;

[89] Alegria et. al., Racial and Ethnic Disparities in Pediatric Mental Health, Child Adolesc Psychiatr Clin N Am. 2010 Oct; 19(4): 759–774., October 1 2011, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3011932/

[90] Hargett, Disparities in Behavioral Health Diagnoses: Considering Racial and Ethnic Youth Groups, NCMJ vol. 81, no. 2, March 2, 2020

[91] Social Security Agency, Continuing Disability Reviews, available at: https://www.ssa.gov/ssi/text-cdrs-ussi.htm#:~:text=WHAT%20IS%20A%20CONTINUING%20DISABILITY,Continuing%20Disability%20Review%20(CDR)

reduce SSI benefits, excluding student financial aid from consideration of income or resources, and, for youth under 22 in school on an Individualized Education Plan, providing an additional large work exclusion.[92]

Screening is equally important for Title II benefits. As noted above, Black children may be statistically underrepresented in obtaining survivor benefits.[93]

Besides the financial benefits for youth, determining eligibility serves a number of other purposes. As the Congressional Research Service (CRS) described:

> Screenings by child welfare staff can help to determine an individual child's needs and to secure extra benefits and services not normally available in foster care, such as housing modifications [….] [A] child's eligibility for SSI or another Title II Social Security benefit[[94]] may extend beyond his/her stay in foster care, and the benefit could provide crucial support for the child outside the system. (For instance, the benefit could offset the cost of therapeutic care to the families of children who leave care due to adoption or reunification.) [….] Children in foster care may also gain from screenings because presumably, the child welfare agency would go on to help the child apply for benefits and appeal any decisions regarding the benefits. For children who receive benefits, they would continue to receive the benefits even after leaving care (assuming they are under the age of 18), and upon reaching the age of 18, SSA would automatically review their cases to determine if they meet the SSI disability standard for adults. Receipt of SSI can also be beneficial because most recipients are automatically eligible for certain other federal (and state) benefits, including Medicaid.[[95]]

Regardless of DCF's taking of benefits for use by the state, DCF must be responsible for screening children in foster care for eligibility given their duty to prioritize the best interests of the child. As Professor of Law Daniel Hatcher noted:

> Under state laws, child welfare agencies exist to serve and protect the best interests of abused and neglected children, establishing a fiduciary obligation. Further, the agencies assume an additional layer of fiduciary obligation under federal law when they become representative payees for children's Social Security benefits. Under the core [tenet] of fiduciary law, child welfare agencies must act in the best interests of their beneficiaries (the children) and can never use the fiduciary power to prioritize their own interests over the interests of the children. The agencies violate their fiduciary obligations when they take control over foster children's Social Security

[92] In 2023, this amount was up to $2,220 per month, capped at $8950 per calendar year.
[93] See https://www.cbsnews.com/news/social-security-survivor-benefits-black-children-parents/; https://thehill.com/opinion/finance/3945944-number-of-orphaned-children-in-the-black-community-is-growing-rapidly-congress-must-help/
[94] The other Title II benefits referred to here are dependent/survivor benefits as a child of a wage earner which may continue after age 18 if the child themselves meets the adult disability standard.
[95] Id. at 22-23.

benefits and use those benefits for agency/state interests rather than for the children.[[96]]

B. Screening: Practices In Other Jurisdictions

Other jurisdictions which have enacted legislation to stop state foster care agencies from taking benefits have included provisions for the state agency to screen children for benefits:

Arizona: DCS must engage in i**nitial screening within 60 days** for SSA or VA benefits eligibility. Applications required if potentially eligible. **An annual review is required** to screen for benefits eligibility. Notice as to applications must be provided annually to the child, the child's attorney and parents or guardians.[97]

California: Screening for SSI required **between 16.5 and 17.5** years of age.[98]

Illinois: When the Department receives temporary custody or guardianship of a youth in care, it **assesses them for benefit eligibility** and **files an application on the child's behalf**. In addition, the Department determines rules to regularly review cases to determine if a child has newly become eligible for benefits.[99]

Washington, DC: The Department must **screen all children in foster care for benefit eligibility** and **apply on a child's behalf** if they are eligible.[100]

Philadelphia, Pennsylvania (local): The Department ensures that all children are **screened for benefit eligibility** within 60 days of being committed to department custody, and, if eligible, the department will **apply for benefits on their behalf**.[101]

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[96] Hatcher (2019), *supra*, at 109.

[97] 2023 Arizona House Bill No. 2559, now enacted and signed by the Governor (June 19, 2023), amending Section 8-453 of the Arizona Revised Statutes.

[98] See legislation enrolled by the California legislature and now awaiting the Governor's signature, available at https://legiscan.com/CA/text/AB1512/2023

[99] 20 ILCS 505, Children and Family Services Act, available at https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=242&ChapterID=5

[100] Preserving Our Kids' Equity Through Trusts (POKETT) Amendment Act of 2022, available at https://trackbill.com/bill/district-of-columbia-bill-857-preserving-our-kids-equity-through-trusts-pokett-amendment-act-of-2022/2264800/

[101] Philadelphia City Council, Councilmember Gym Announces Legislation to Give Back More Than $1 Million Annually to Youth in Foster Care, March 17, 2022, available at https://phlcouncil.com/councilmember-gym-announces-legislation-to-give-back-more-than-1-million-annually-to-youth-in-foster-care/

<u>Los Angeles, California (local)</u>: County placing agencies must **screen all youth** over the age of 16 ½ for potential SSI eligibility and **apply on behalf of any youth** likely to be eligible for SSI with the goal of establishing a child's eligibility by age 18.[102]

<u>New York City, New York (local))</u>: The agency will create a plan to ensure that it **promptly applies for benefits** for youth in foster care who are eligible for SSI and/or Dependent/Survivor benefits.[103]

It is also important for DCF to screen foster care youth universally for possible SSI or Title II Dependent/Survivors' benefits eligibility as a disabled adult, prior to their turning age 18. The disabled adult child benefit on a parent's wage-earning record may be filed as early as the youth attaining the age of 17 ½. POMS RS 00203.080. The SSI application process may be filed up to 180 days before the child's 18th birthday.[104] However, we have been unable to identify any DCF policy that requires DCF to assist with the application process for these adult benefits before a child leaves the oversight of the Department.[105] Assuming this is correct, such a policy should be developed by DCF.

C. The Importance of Notifying Youth, Families, and Attorneys

As with screening a child for their benefit eligibility, DCF should provide notice to a child and their guardian, attorney, or other relatives or interested adults, when they apply for

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[102] Revised Motion by Supervisors Hilda L. Solis and Sheila Kuehl, *Social Security Benefits for Youth in Foster Care*, available at https://file.lacounty.gov/SDSInter/bos/supdocs/159977.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=; Joseph Shapiro, *Los Angeles County Moves To Get More Money Into The Hands of Foster Youth*, July 16 2021, available at https://www.npr.org/2021/07/16/1016996802/los-angeles-county-moves-to-get-more-money-into-the-hands-of-foster-youth.

[103] Administration for Children's Services Announces Plan to Ensure Youth in Foster Care Who Are Eligible for Social Security Income Have Benefits in Place & Can Receive Those Funds, available at https://www.nyc.gov/assets/acs/pdf/PressReleases/2021/SocialSecurityIncome.pdf

[104] See SSA POMS DI 25201.011 https://secure.ssa.gov/poms.nsf/lnx/0425201011 See also https://www.ssa.gov/policy/docs/ssb/v73n3/v73n3p53.html, a SSA policy memo which discusses the vulnerability of foster care youth after transition and the importance of SSA benefits in mitigating risk factors. In addition, youth receiving SSI at age 18 must undergo an Age-18 Review to determine adult eligibility for SSI. POMS SI 23570.070. As a representative payee, DCF must be attentive to notices from SSA about this process to avoid administrative loss of benefits.

[105] New York state, for example, requires that SSI applications be filed by their department at least 90 days before transition. See https://ocfs.ny.gov/main/policies/external/OCFS_2010/10-OCFS-ADM-04%20Filing%20SSI%20Applications%20for%20Disabled%20Youth%20Transitioning%20Out%20of%20Foster%20Care.pdf p. 4.

benefits on a child's behalf. Additionally, DCF should provide notice when significant actions are taken related to a child's benefits, such as petitioning to become a child's representative payee, any decisions and major communications from Social Security around a child's application for benefits, and regular notice of the account's significance (for example, a monthly report on how much money the Department is taking).

DCF is able to track the benefits of the youth in their care through iFamilyNet, a program which tracks money received and spent related to the child's benefits. iFamilyNet contains a breakdown of the money available to a child in a Personal Needs Account (PNA), cumulative funds received on behalf of the child, plus other funding—and for each category, a breakdown of the source of that money, be it SSI, Title II, or something else. It also tracks money spent out of a PNA, and money that is diverted into the General Fund. DCF is working on making this information more easily available internally and through an attorney portal, so an attorney can obtain this information on behalf of their client. The agency believes this portal will be available in the first half of CY 24, barring unforeseen circumstances.

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While the Supreme Court in *Keffeler* did not address this issue, the Maryland Supreme Court in the 2013 decision *In re Ryan* found children in foster care and their lawyers have a due process right to notice when a foster care agency has applied to be representative payee, and if this application is successful, before they are deprived of property, in accordance with the 14th Amendment.[106] In addition, foster care agencies must "provide regular accountings of how the money is used."[107] "After receiving notice, foster children can challenge the appointment of the foster care agency as their representative payees and request a different payee that will truly protect their interests."[108] A trial court judge in Alaska agreed, ruling that Alaska's child welfare agency must notify youth when it takes their SSI or Title II benefits, give them the option to choose a different representative payee, and explain the consequences of the child welfare

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[106] *In re Ryan W.*, 434 Md. 577 (2013); Hatcher (2019), *supra*, at 110.
[107] *Id.*
[108] *Id.* See generally https://www.themarshallproject.org/2021/04/22/were-you-ever-in-foster-care-here-s-how-to-find-out-if-the-government-took-your-money

agency as a representative payee.[109] Furthermore, the child welfare agency should provide notice about benefits eligibility.[110]

Several other jurisdictions have established provisions for notifying a child and their representatives of their Social Security Benefits:

> **Arizona:** An annual accounting as to the use and conservation of benefits must be provided annually to the child, the child's attorney and parents or guardians. DCS must provide **notice of application, denial or appeal** to child, child's attorney and (if rights are not terminated) to parent/guardian) and consult as to whether an appeal is in the child's best interests. For children who are currently eligible, DCS must consult with the child, child's attorney as to **whether it should apply become representative payee.**[111]
>
> **California:** Includes notice of intent to apply for representative payee status, and notification of an application for benefits, and decisions or communications with SSA. An accounting is provided upon request for any child aged 12 or older.[112]
>
> **Maryland**: The Department shall **immediately notify the child** (through their attorney) of any application for benefits made on their behalf, any application for the Department to become representative payee on their behalf, any decisions or communications from the relevant administration regarding application for benefits, and any appeals or other action requested by the department regarding an application for benefits. When the department serves as a child's representative payee, the Department must notify the child (through their attorney) prior to each juvenile court hearing of information regarding all the child's assets and resources, along with the dates and amount of benefits received on the child's behalf since any prior notification to the child's attorney.[113]

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[109] https://imprintnews.org/top-stories/judge-curbs-alaskas-practice-of-claiming-foster-youths-federal-benefits/61491 As noted above, this case is on appeal and is before the Alaska Supreme Court.

[110] *Id.*

DCF in Massachusetts has a "Foster Care Bill of Rights," available at https://www.mass.gov/doc/foster-child-rights-0/download which does not require notice of benefits being collected in the child's name and being retained by the state. It provides that the agency must give the child a copy of their social security card upon request.

[111] 2023 Arizona House Bill No. 2559, now enacted and signed by the Governor (June 19, 2023), amending Section 8-453 of the Arizona Revised Statutes.

[112] See legislation enrolled by the California legislature and now awaiting the Governor's signature, available at https://legiscan.com/CA/text/AB1512/2023.

[113] Md. Code Fam Law § 5-527.1

Nebraska: When the department serves as a representative payee for a child receiving Social Security benefits, **the department shall provide notice**, within 30 days of receiving the first benefit payment on the child's behalf, to the child beneficiary in an age-appropriate manner (along with their guardian ad litem) that the department is acting as the child's representative payee for the purpose of receiving social security benefits. The department must also provide notice at every review hearing in juvenile court for the child of the department's receipt and conservation of benefits, along with accounting records.[114]

Illinois: For youth over age 16, the Department must **immediately notify the youth**, their attorney, their guardian ad litem, and their parent (or legal guardian, or other responsible adult) of any application for benefits on their behalf, any application to become representative payee, any communication from the relevant benefit agency regarding acceptance or denial of benefits (or the selection of a representative payee), and any appeal requested by the Department for a benefits application. The Department must also provide annual accounting to the youth's attorney and guardian ad litem of how their benefits are used and conserved. A youth/their attorney/their guardian ad litem can request information on how benefits have been used and conserved, the department shall provide information within 10 business days.[115]

Washington, DC: The agency shall **immediately notify the child**, their guardian ad litem, their parents, and/or their guardians of any application by the department to become the child's representative payee, any decisions or communications from SSA regarding the child's benefits application, and any appeal by the department regarding the child's benefits application. The agency must also provide an accounting to the child and their guardian of a child's benefits at least once every six months.[116]

[114] Nebraska Legislative Resolution 198, available at https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LR198.pdf

[115] 20 ILCS 505, Children and Family Services Act, available at https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=242&ChapterID=5

[116] Preserving Our Kids' Equity Through Trusts (POKETT) Amendment Act of 2022, available at https://trackbill.com/bill/district-of-columbia-bill-857-preserving-our-kids-equity-through-trusts-pokett-amendment-act-of-2022/2264800/

<u>Philadelphia, Pennsylvania (local)</u>: The Department is authorized to **ensure notification to the child** through their attorney/guardian of any application, decision, communication, or appeal related to the child's benefits.[117]

VII. Guidance and Obligations on Identifying the Most Suitable Representative Payee

The need for sufficient notice involves an equally important issue: ensuring that the child has a suitable representative payee. A state foster care agency may not be the only available option to serve as a representative payee for a child in foster care. In fact, organizational payees are listed last, or next to last, on SSA's list of preferred representative payees. For beneficiaries under 18, the following groups are ranked above "an authorized social agency or custodial institution" in deciding among possible representative payees:

> natural or adoptive parents with custody, or a guardian; a natural or adoptive parent without custody that demonstrate strong concern for the beneficiary's well-being (even if the individual does not contribute toward their support); relatives or step-parents with custody; relatives without custody that contribute to the beneficiary's support and demonstrate concern for their well-being; and relatives or close friends without custody that demonstrate concern for the beneficiary's well-being.[[118]]

Only after all those options should the SSA choose "[a]n authorized social agency or custodial institution."[119]

Once an agency has been approved by SSA to serve as a representative payee, the agency has a role under federal law in identifying for more suitable people to assume this role. Section 103(a) of the Strengthening Protections for Social Security Beneficiaries Act of 2018 requires SSA to "enter into agreements with states to share and match child welfare and SSA data on a monthly basis," to identify represented minor beneficiaries who are in foster care, and for beneficiaries "whose foster care arrangements have changed, [to] redetermine the appropriate

[117] Philadelphia City Council, *Councilmember Gym Announces Legislation to Give Back More Than $1 Million Annually to Youth in Foster Care*, March 17, 2022, available at https://phlcouncil.com/councilmember-gym-announces-legislation-to-give-back-more-than-1-million-annually-to-youth-in-foster-care/

[118] See e.g., 20 C.F.R.§ 416.621.

[119] *Id.*

[payee].”[120] Under SSA regulations, the representative payee must also notify SSA of changes that make it not a suitable payee, such as when the youth resumes living with a parent or a caring relative and it is in the youth’s best interest for that individual to serve as representative payee.[121]

A. The Importance of Connecting BIPOC Children to Kin

Several advocates for the welfare of children in foster care have identified a broader need for foster care agencies to connect children with their families when possible. State foster care agencies have a history of over-separating Black, Native, and Latinx children from their families when compared to White children. Native children in the late 1800s were removed from their homes and sent to assimilationist boarding schools, stripping them of their language and culture.[122] In the mid 1900s, Black (and Native) families were increasingly surveilled by child welfare agencies for alleged neglect stemming from higher rates of poverty, while poor white families were given federal support.[123] Nationally, these trends of over-policing families of color who display signs of poverty continue, and foster care agencies continue to remove children from homes when there may be possibilities for improvement with financial support. In Massachusetts, Black and Latinx children are overrepresented in DCF placement outside of the home, while white children are underrepresented in out-of-home placements.[124]

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[120] The Honorable Ron Wyden et al., Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries, U.S. Government Accountability Office 1, 1-2 (June 3, 2021), available at https://www.gao.gov/assets/gao-21-441r.pdf.

We acknowledge that representative payment is an SSA rule, and It is SSA who decides whether a beneficiary needs a payee and who that payee will be. SSA may provide some leads on potential payees, but they do not assign payees from a payee pool. A person or an agency must apply to be a beneficiary's payee. Multiple organizations or individuals may apply at the same time or seriatim. It is SSA's job to decide who is best situated to use the beneficiary's SSA benefits in the beneficiary's best interests. That said, DCF could certainly be alert to youth approaching age 18 who could be their own payees and provide management skills to the individual. It could also identify an appropriate family or other community payees and could encourage others to apply to become representative payees.

[121] Massachusetts law assumes a similar responsibility. Under state law, DCF’s role is to search for any relatives “or other” adult person who has played a significant positive role in that child’s life.” While this applies to placement, and not being assigned as representative payee, it reflects a preference for one other than a child welfare agency oversee a child’s well-being.

[122] Alliance for Children’s Rights 2021 Policy Summary report at 2.

[123] Id at 3.

[124] Shutting Down The Trauma to Prison Pipeline, CFJJ at 5. Native American children in MA were also overrepresented in out-of-home placements, but this difference was smaller compared to the overrepresentation found for Latinx and Black children.

Reunification with a child's family is a goal of foster care agencies and stakeholders, including DCF. When supports are available to a child's kin, the child can retain a connection to their family, which is critical to their well-being later on in life.[125] Kin caregivers should not be discounted simply because they are experiencing poverty, and this extends to the appointment of a viable representative payee. A child's natural parent, even without contributing to a beneficiary's support, is preferred as a representative payee over a foster care agency provided that the parent "demonstrat[es] strong concern for the beneficiary's well being."[126] Similarly, a child's relatives are preferred over the agency when they demonstrate concern for a child's well-being, even if that concern does not come with financial support.[127] Given the history and current trends that discount the viability of Black, Latinx, and Native families as viable caregivers, it is crucial the agency be conscious of potential biases that would impact the decision-making in identifying representative payees other than itself. Efforts to consult with a child and their guardians for the provision of a child's Social Security benefits would not undermine the agency's mission. Other jurisdictions have also supported efforts to work with families in identifying an alternative representative payee.[128]

VIII. DCF's Response to Calls for Reform

A. Cooperation and Dialogue with DCF

DLC first raised this issue with DCF in a lengthy written response submitted to the agency in January 2022. We began meeting with the agency in March 2022 and have met at various intervals after that date. In October 2022, we also submitted comments to proposed

[125] Transforming Child Welfare: Prioritizing Prevention, Racial Equity, and Advancing Child and Family Well-Being at 6.

[126] 20 C.F.R. § 416.621

[127] *Id.* Our understanding is that DCF participates in data sharing with SSA, but that these arrangements are not used to identify alternate representative payees.

[128] Washington D.C. requires the district's foster care agency to coordinate with the child and their legal parental figures to develop a plan to use and control a child's benefits in their best interest. If disagreements arise between parties, the preferences of parties other than the agency are taken into account: for example, the preferences of a child's parent if the child will be reunited with them.

Illinois legislation instructs the state's foster care agency to identify a representative payee in accordance with federal regulation (which would place the state foster care agency at a lower priority than family members) and in doing so to consider input provided by the youth's attorney and guardian ad litem surrounding the availability of other representative payees.

regulations, along with the Committee for Public Counsel Services. We appreciate that throughout that process, DCF General Counsel's office has been accessible, cooperative and candid within the limitations of state agency decision-making. Their office has attempted to answer larger policy and factual questions, raised helpful concerns, and made front-line staff available to resolve more technical matters. While policy decisions are underway, counsel have also attempted to assist individual clients or constituents with personal questions regarding their own SSA benefits where DCF has acted as representative payee. It is particularly helpful that DCF counsel have developed recommendations for expanding information available to youth, families and attorneys on online agency portals. To the extent that the development of ABLE accounts had been delayed, this had largely to do with technical requirements which were being imposed by the fiscal agent for this program which were only dropped in May 2023, a matter outside the agency's control.

B. DCF's Positions on the Type and Pace of Systems Reform

On substantive policy, we firmly oppose the current position of the Department, as explained to us in June 2023. With respect to ABLE accounts and conserving SSI funds, we understand that DCF has no immediate plans to discontinue the confiscation of 90% of children's SSI benefits and to save instead these funds for the needs of youth transitioning into adulthood and independence. Instead, the agency posits opening ABLE accounts to *conserve only accumulated funds from the child's personal needs account, the 10% of funds it has not seized*, when account balances approach the $2,000. asset limit. Any excess funds would then be rolled over into an ABLE account.

We strongly disagree on two grounds. First, this does nothing to correct the continuing injustice of taking 90% of SSA benefits of foster youth for the General Fund.

Second, using the child's personal needs account (as opposed to the funds being taken by the Commonwealth) as a long-term savings vehicle may pose adverse outcomes for the well-being of children in foster care. The Department's own training materials explain that these funds are to be used for summer/educational camps, clothing, personal hygiene items, toys, devices and hardware, bicycles, special travel and the like.[129] Presumably this is why the Department has specifically directed that "Funds [from PNA] must not be saved or put into a separate account for the child.[130]

DCF maintains that it needs to begin incrementally learning how to open and manage ABLE accounts. We appreciate this policy change poses technical questions and that protocols and policies need to be developed and implemented correctly. However, this rationale does not apply to Title II funds which can be saved immediately in ordinary savings accounts. In sum, the Department's suggested approach falls far short, because:

- It has not agreed to use PNA (10%) money for savings of SSI recipients only temporarily, as an interim measure;
- It has not committed to conserving all of the 90% of benefit checks of 1,250 foster youth which it is currently diverting into the General Fund;[131]
- It has not provided concrete assurances, timelines or enforceable agency obligations for future systems change; or
- It is not taking any steps whatsoever to conserve Title II benefits, which can currently be placed into with ordinary savings accounts.

The policy positions of the agency and the lack of a formal or robust response to calls for meaningful change,[132] underscores the need for legislative action.

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[129] See Massachusetts DCF, "Personal Needs Account (PNA) Disbursement User's Guide, Overview, p. 2 (On file with the author). Once placed into an ABLE account, funds for these expenses may or may not be Qualified Disability Expenses for the purposes of an ABLE account withdrawals. "ABLE account funds may be used for qualified disability expenses, or QDEs, which may include any expense related to the beneficiary as a result of living a life with a disability." See ABLE National Resource Center FAQ available at https://www.ablenrc.org/frequently-asked-questions/#qualified-disability-expenses

[130] Letter from Susan Tucker, MA DCF Director of Foster Care Support Services to Providers of Congregate Care Services, December 4, 2020 (On file with the author),

[131] As noted above, some states take a decreasing percentage of foster children's SSA benefits as they age between 14 and 18, with 100% of benefits going to the child by age 18. We believe wrongfully seizing a smaller percentage of the disability or survivorship benefits of a child in foster care has no greater legal or moral stature than seizing 90% or 100% of the child's benefits.

[132] As noted above, this issue was raised by the local media in May of 2019 (Hank Phillippi Ryan, "7Investigates: Foster Children's Money" (May 9, 2019) available at https://whdh.com/7-investigates/hank-investigates/7investigates-foster-childrens-money/), but has been criticized nationally for many years before this. See e.g., Children's Advocacy Institute at the University of San Diego Law School and First Star, *"The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security." (2011), available at* http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf; McGill, Penny Wise, Pound Foolish: Child Welfare Agencies as Social Security Representative Payees for Foster Children," 58 Case W. Res. L. Rev. 961 (Spring 2008). National media widely reported on this issue in 2021 and DLC submitted RFI comments in January 2022. As noted above, in October 2022, DLC and the Committee for Public Counsel Services (CPCS) submitted comments to proposed regulations formally raising these issues yet again.

IX. Legislative Solutions

The legislature has proposed a bill that we believe is necessary to protect the benefits of youth in foster care in the Commonwealth. As discussed above, we believe that the current practice of siphoning away social security benefits already violates existing state law. Nonetheless clarifying DCF's obligations to the children in its care through legislation is an effective and efficient way to curb current practices and protect the benefits of youth.

Representative Farley-Bouvier has filed H.157[133], and Senator Comerford filed its parallel provision, S.65[134], to require SSA benefits to be conserved; to address screening of children in the foster care system for benefit eligibility; to provide transparency and appropriate notice to youth and their representatives, and to provide financial empowerment training and other services for youth under DCF custody, as summarized below:

A. Screening and Applying for Benefits

The proposed legislation sets out that DCF must make "all reasonable efforts" to identify whether a child is eligible for or already receiving benefits within 60 days of a child being committed to department custody. To review eligibility, DCF is expected to consult with parents and others who may have information about the child's eligibility. If DCF determines or believes the child is eligible they will apply for benefits on child's behalf in cooperation with the child's attorney. If benefits are denied, the department will notify the child's attorney and consult with them to determine if the decision should be appealed. Importantly, DCF would review children's cases annually, with the intent to determine if a child had become eligible following initial assessment.

B. Applying to be a Representative Payee

When considering whether to apply to be a child's representative payee, DCF must be cognizant of reunification, if that is the goal, and whether DCF's role as representative payee

[133] H. 157, available at: https://malegislature.gov/Bills/193/H157
[134] S. 65, available at https://malegislature.gov/Bills/193/S65

would undermine that goal. Should DCF become the representative payee, they must also periodically review whether someone else is best suited to serve as the child's representative payee.

The bill also requires DCF to act promptly to initiate a change in the representative payee status back to a parent, guardian or an 18 year old, where appropriate. This includes returning or transferring funds when necessary. While ultimate decision rests with the SSA, prompt action by the agency may be critical to avoid circumstances in which a young adult or family will lack basic resources.[135]

C. Notice and Reporting Requirements

DCF would be required to provide notice of their application to become the representative payee to parents, guardians, the child's attorney, the parent or legal guardian's attorney, and child's caseworker, and the child (if 12 or older). The notice must inform individuals of their right to contest the selection of a representative payee. DCF must further provide notice to the same parties on the acceptance or denial of an application for benefits or to serve as a representative payee, or an appeal of other action requested by DCF regarding an application for benefits. Notice must also be given regarding a special trust account or savings account established on behalf of the child.

DCF must also submit a quarterly report to the child, parents, guardian, counsel for the child, counsel for parents/guardians, the child's caseworker, and/or the court, detailing the amount and source of benefits collected on behalf of the child, any deductions or withdrawals, and information on all of the child's assets and resources.

DCF would be required to submit an annual report to the Massachusetts state legislature detailing the number of children in their care screened for benefits, whether the screenings occurred within the first 60 days of their custody of the child and, if not, any reason for the delay, the percentage of children receiving benefits, discovered to be eligible for benefits, or discovered

[135] Subsection (f) of the bill includes the following language: "The department shall work actively with the Social Security Administration and the child to ensure that when the child leaves foster care or turns 18, all payments of benefits will be returned to the Social Security Administration to be held on the child's behalf or, upon the instructions of Social Security Administration, transferred to the child or to a new representative payee." https://malegislature.gov/Bills/193/S65,

to not be eligible for benefits, application for benefits, success of such applications, the breakdown of what person or entity is serving as representative payee, and the savings tool used on behalf of the children receiving benefits.

D. Conserving SSA Benefits

Under this legislation, the child's benefits would be conserved for the child's own use. 10% would be kept in a personal needs account, and the remainder will be conserved in an ABLE account, or other account that does not count against the asset limitations, if applicable. None of the money received through benefits should be used to pay for items or activities DCF normally purchases on behalf of children not receiving benefits, nor towards offsetting the cost of providing foster care. DCF would also be required to provide the child with financial literacy training beginning by age 14, including information on the child's specific accounts and assets, and make available such training for parents, guardians, and adoptive parents.[136]

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We urge the state legislature to act swiftly to pass these measures in the current legislative session. Beyond this, we recommend the following, parallel changes to DCF's administrative practices.

X. Recommendations for DCF and Conclusion

A. ***The Department of Children and Families (DCF) should no longer take the Social Security benefits of eligible children and young adults and divert the majority of the monies into the General Fund.*** Children are legally entitled to these benefits, and taking these funds to

[136] The Massachusetts bill provides for only prospective relief, requiring changes in policy to prohibit future diversion of SSA benefits of youth in foster care. Two other states, however, introduced legislation which would also require retrospective relief, requiring the foster care agency to reimburse or compensate youth for past benefits taken from them. See pending legislation in Minnesota https://www.revisor.mn.gov/bills/text.php?number=HF2467&version=latest&session=92&session_number=0&session_year=2023. A similar measure in Oregon did not pass. https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB0557/Introduced Retrospective compensation is also part of the relief sought in the pending class action case before the Alaska Supreme Court. https://appellate-records.courts.alaska.gov/CMSPublic/Case/General?q=w6sobc/DATfEoWTAKIky/w==%27

reimburse the state for the cost of a child's care is inconsistent with the spirit and arguably the letter of Massachusetts law. We must ensure that these funds are available for use in the child's best interests and should follow the lead of other jurisdictions who have moved away from or altogether stopped similar practices.

DCF's current proposal, to begin by helping the child conserve the ten percent of their benefits that it does not confiscate, does little to address the legal, moral and policy-related deficiencies of current practices, conditions which lead to youth in the foster care system aging out into near destitution, after the state has taken away their financial resources.

B. ***DCF should conserve all of the SSA benefits of children who are in its custody which are not being used for personal needs, so that these funds can be used to support a young person when transitioning out of foster care.***

- For children receiving SSI, who will have to contend with an asset limit, ABLE accounts should be utilized. Alternatively, DCF could utilize special needs trusts, PASS, and IDAs or similar tools.
- For children receiving Title II benefits, who do not have an asset limit associated with their funds, DCF should utilize savings accounts, 529 college savings plans or similar tools.

C. ***DCF should automatically screen children in Department custody to determine if they are eligible for SSI or Title II benefits, and then apply for benefits on a child's behalf.*** DCF has a duty to act in a child's best interest. For eligible children, applying for benefits can help these children secure necessary resources and overall aid's DCF's ability to support children. Given the possibility that DCF is under-screening children for benefit eligibility and the potential of a child becoming eligible for benefits after an initial screening, DCF should develop automatic screening processes for children in departmental custody.

D. ***DCF should adopt and enforce a policy to provide appropriate notice to children, their attorneys, and other interested adults when actions are taken in relation to a child's benefits***. Notice can be given in a manner that is age appropriate for a given child. At minimum, DCF should provide notice to a child, the parent(s) and their attorneys when it applies to be their representative payee and whether the application is successful. Additionally, DCF should notify a child and their attorney of how their benefits are being used and offer more opportunity to find a suitable payee.

E. ***DCF should actively seek out other individuals such as a child's kin or guardian to serve as representative payee.*** Consistent with SSA regulations, there are often other preferable parties over DCF who could apply to be appointed as a child's representative payee over DCF. Actively searching for other individuals to serve as representative payee can be beneficial for the child and overall goals of reunification.

F. ***DCF should universally screen youth who are transitioning out of foster care for adult SSI and adult Title II eligibility.*** If youth are found eligible for these services, DCF should provide assistance and support to the youth in applying for benefits.

G. ***DCF should provide financial literacy/empowerment training to youth receiving benefits, and to their families in cases of reunification, adoption or guardianship ensuring that youth know how their benefits work and how to manage their own funds after reaching independence***. This should include monies received through a PNA while in DCF care or through an ABLE or other savings account once they age out, and any restrictions on the use of such funds.

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DCF has failed to act as a responsible steward of funds held as a representative payee, while managing disability, survivor's and dependent benefits of youth in foster care. Once the agency becomes a representative payee, it has a fiduciary responsibility in managing those financial resources. Acting under aegis of that authority, and notwithstanding its mandate to act in the child's best interest, DCF gives over 90 percent of these funds to the Commonwealth's General Fund without any "use or benefit" experienced directly by the beneficiary. DCF takes this money even though both federal and state law already obligate the agency to provide, and already fund, foster care services. To our knowledge, no such financial penalty is imposed on others in the foster care system, including children with other assets or parents who bear the legal responsibility for care and support.

It is a policy that is both legally and morally questionable, and clashes with values of fair and compassionate governance in the Commonwealth. Children in the foster care system have already endured trauma, abandonment, exploitation, abuse, or neglect. Whatever they are due from society, we should begin by not taking what is owed to them and making things worse. If we do not siphon away their government benefits, and instead help young people save for their transition to adulthood, they will be better positioned to live independently and successfully as adults. Jurisdictions around the country have reformed these policies. The Commonwealth can and should do likewise.

Disability Law Center, Inc.
September 26, 2023

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Finally, we thank the young people currently in the foster care system, adults who were formerly in the system, and their family members who came forward to tell their compelling stories to us, both privately and publicly, in the interest of providing an easier path for those who will follow.

Of course, the opinions expressed here represent only the views of the Disability Law Center.

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Appendix A: Questions and Answers on Conserving Benefits (Adapted from the Children's Advocacy Institute at the University of San Diego Law School)

If the practice of taking a child's Social Security benefits happens frequently across the country, isn't Massachusetts' current practice acceptable?

No. The frequency of the practice does not negate the fact that Massachusetts is actively taking money belonging to youth in foster care for their General Fund. Furthermore, multiple jurisdictions have enacted legislation or adopted policies that curb the taking of a child's Social Security benefits and instead establish methods to conserve a child's benefits for use once they leave foster care. Additionally, though not yet passed, several other states have introduced legislation that would stop state foster care agencies from taking children's benefits, and federal Congressional and administrative action is pending.

Isn't it true that taking money from children in foster care who are already in vulnerable positions helps the state to secure their benefits?

No. There is no evidence that youth receive better foster care or enhanced services when the state intercepts their funds, or that the interception of funds is tied to a child's best interest. Securing benefits for eligible youth serves the best interest of the child. When DCF takes this money for the General Fund of the Commonwealth, it serves only the interests of the state.

Screening and applying for children's benefits is not an act of benevolence. It is what reasonable parents do when their child may have a disability requiring treatment, services, or equipment, or has suffered the loss of a parent. When DCF is a child's legal guardian and fiduciary, they are responsible for identifying the special needs and circumstances of children entering care.

Although children have no debt to pay for their own care or the associated administrative costs, states may request federal reimbursements for expenses necessary for the proper and efficient administration of the Title IV-E state plan. We understand that the Commonwealth already received IV-E administrative costs which may help defray costs for all children in foster care who are SSA beneficiaries, and also IV-E maintenance costs which may partially compensate the state for costs incurred for children on Title II benefits.[137]

[137] A child's Title II benefits cannot be used for the state match required for IV-E maintenance funds. See OIG audit discussed in *The Fleecing of Foster Children*, Children's Advocacy Institute at the University of San Diego Law School and First Star, 2011, p. 18, available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf

Will DCF stop screening and applying for benefits if they cannot take the benefits?

No. Screening and applying for benefits is a long-standing practice of DCF. Furthermore, the proposed bill would require more accountability in screening and applying for benefits in appropriate cases. Across the country, almost all states have a decades-long practice of screening and applying for Social Security benefits before then intercepting these benefits. DCF's own policy sets the process for reviewing case records to identify children that are current recipients of Social Security benefits or could be eligible for benefits. DCF policy sets out expectations that social workers will apply for both SSI and Title II benefits where applicable.

In 2003, many children's organizations expressed the concern in the *Keffeler* case that agencies might stop screening if they could not retain funds. Most have reversed their position in light of evolving understanding of outcomes and needs of transition age youth, and the ethical and fiscal imprudence of taking children's benefits to cover an expense already covered for other youth.

As mentioned in this report, several new state laws require both screening/application for benefits and prohibition on using those funds to pay for the cost of care. Model reform requires that these go together to best meet the needs and serve the interests of youth. When we consider the small number of youth in DCF custody who are on SSI benefits, more rigorous screening practices seem necessary in Massachusetts to ensure that the Department does not overlook children who have disabilities or who become eligible for disability benefits later on in DCF custody.

Would no longer taking SSA benefits affecting state funding for foster care?

Unlike many other states, in Massachusetts, the benefits that the state intercepts are placed into the state's General Fund rather than being used to directly reimburse the state for the costs of a child's care. There is no direct relationship between the money taken from youth and the amount appropriated for foster care the next year.

Moreover, the amount of money that DCF takes from children's Social Security benefits is small in comparison to both DCF's and the state's overall budget—but could make a significant difference to the children it is taken from. The money DCF diverts to the General Fund is approximately $450,000 to $500,000 per month or over $5.5 million dollars per year.

Massachusetts' budget for the financial year of 2023 included $52.4 billion in spending.[138] The money from the benefits of youth in foster care represents 0.01% of that figure.

Most importantly, children in foster care have no obligation to pay for their care, any more than public school children have any financial obligation to pay for their public education. That the state has been improperly taking their funds and must now properly use the benefits is not the responsibility of the youth in foster care. Filling any budget holes left after agencies stop the practice is an ethical and fiscal obligation for agencies to resolve.

The importance of ensuring children in foster care having full access to their benefits outweighs any budgetary gaps that might be left by the change in policy. Such gaps, if any, are unlikely to be large as the money gained from children's benefits represents only a small fraction of the DCF and the Commonwealth budgets, while representing a significant amount of money for an individual. Furthermore, there are other sources of funding for agencies, such as Title IV-E administrative and maintenance funds, where available.[139]

Hasn't the Supreme Court endorsed DCF's current practice in the *Keffeler* case?

No, *Keffeler* does not establish a precedent addressing this issue. The Supreme Court's ruling was narrow and focused on an anti-attachment provision in the Social Security Act protecting benefits from execution, levy, attachment, garnishment, or other legal process. 42 U.S.C. sec 407(a); see sec.1383(d)(1).

Additionally, the Commonwealth does not directly reimburse itself for foster care costs using children's Social Security benefits. The *Keffeler* court held that the state agency did not act under any "other legal process" *when reimbursing itself for costs incurred for foster care,* which is not the case here. Where there is no nexus between funds paid to the state and the provision of any service, or reimbursement for any cost incurred, the reasoning of the decision does not apply.

[138] https://budget.digital.mass.gov/summary/fy23/enacted/

[139] Advocates are working towards federal policy which will clarify the proper use of Title IV-E administrative funds to support states with the costs of screening, application, appeal, account establishment and monitoring, accounting and reporting. In addition, policy changes are being sought to allow agencies to draw down IV-E maintenance costs for children also receiving SSI, which is currently not permitted. This should reduce some of the financial implications of reform.

The Court did not consider how allowing the representative payee to place the beneficiary's funds in the General Fund would be in the beneficiary's best interest, where there is no other provision for meeting current and reasonably foreseeable needs after transition.[140]

Keffeler also explicitly declined to rule on other constitutional due process issues or claims that the state was "double dipping" by using benefits to reimburse itself for costs previously recouped from other sources.

Conserving the benefits of youth in foster care could result in a windfall to young people who don't know how to manage their money. What if they do not spend it wisely?

The majority of youth who receive Social Security benefits overall receive SSI or both SSI and SSDI. Funds conserved from SSI benefits would have to be placed in an ABLE account or special needs trust, both of which have strict requirements and formal processes to allocate a youth's funds through a trustee, conservator or account administrator in a way that is consistent with the youth's goals and plans.

Youth may choose to stay with DCF after age 18, and some youth may still require a representative payee or guardian/conservator for their benefits after they turn 18.
There is no evidence to support the fear that funds will not ordinarily be spent wisely during adulthood. Studies have shown that youth use conserved funds that are available to them for housing, transportation, food, education, child care, and mental health services.[141]
Financial empowerment training can help youth to manage their funds. The bill proposed in Massachusetts requires the provision of formal financial literacy/empowerment training. Other jurisdictions have required the foster care agency to provide a child financial literacy training, and several proposed bills would require the foster care agency to provide financial literacy training once the child reaches age 14. Children already receive parts of these benefit funds through their Personal Needs Account (PNA) for their own personal use: for example, for purchasing a phone or a laptop. Gradually expanding the funds a youth receives in their PNA, along with increased autonomy over the account as a child approaches adulthood, can help the

[140] Misuse" is the use of funds other than for the use and benefit of the beneficiary or their family dependents. For more detail see e.g. https://www.ssa.gov/OP_Home/handbook/handbook.16/handbook-1617.html

[141] https://www.ylc.org/wp-content/uploads/2021/09/A-Call-to-Action-For-Transition-Aged-Foster-Youth-During-the-Pandemic.pdf

youth manage funds, and replicates what many parents attempt to do outside of the foster care system. Many other jurisdictions have introduced or implemented legislation or policies that provide financial literacy training to youth, including Maryland, Illinois, Washington D.C., and Texas.

Given the risks that youth transitioning out of foster care face, and the possibility of additional care needs due to disability, young people need financial support that the conservation of benefits offers.

Ultimately, the concern that youth transitioning into adulthood with the benefit of financial training, will be likely to "misuse" benefit funds is a paternalistic one that may be based on flawed presumptions about youth in foster care and low-income people. These benefits are the child's funds, and outside of the restrictions that are already placed on the use of conserved funds, they should not be required to justify the right to use their own benefits.

Is legislation really required to fix this issue? Why not just use administrative action?

Yes. Both administrative and legislative change are needed to protect the benefits of young people in foster care. Given that DCF's practices are not required by state law (and we contend, not permitted by state law), it might seem that legislative action might be unnecessary. As a practical matter, while engaging in cooperative dialogue, the agency has not come forward with specific and enforceable provisions to end these practices along a specific timeline. In addition, changes in regulations may be undone by future administrations, and so specific statutory direction to end the diversion of benefits of foster children is a preferred approach, in addition to administrative advocacy.

Would the process of changing account titles be difficult for the agency if children move in and out of foster care?

While reunification is a goal, the child's own family ought to remain representative payee when possible, since the resources of the child's SSA benefits may need to be used for household expenses including rent. This is a permissible and expected use of those benefits. Even in other circumstances, the existing SSA rules require that other family members and other individuals be considered as representative payee before the foster care agency. Adhering to these general principles will minimize the need for account titles to be changed. As for administrative costs generally, some states have chosen to manage account titling of ABLE and savings accounts using the same private contractors who currently administer PNA accounts and who collect what was previously state revenue.

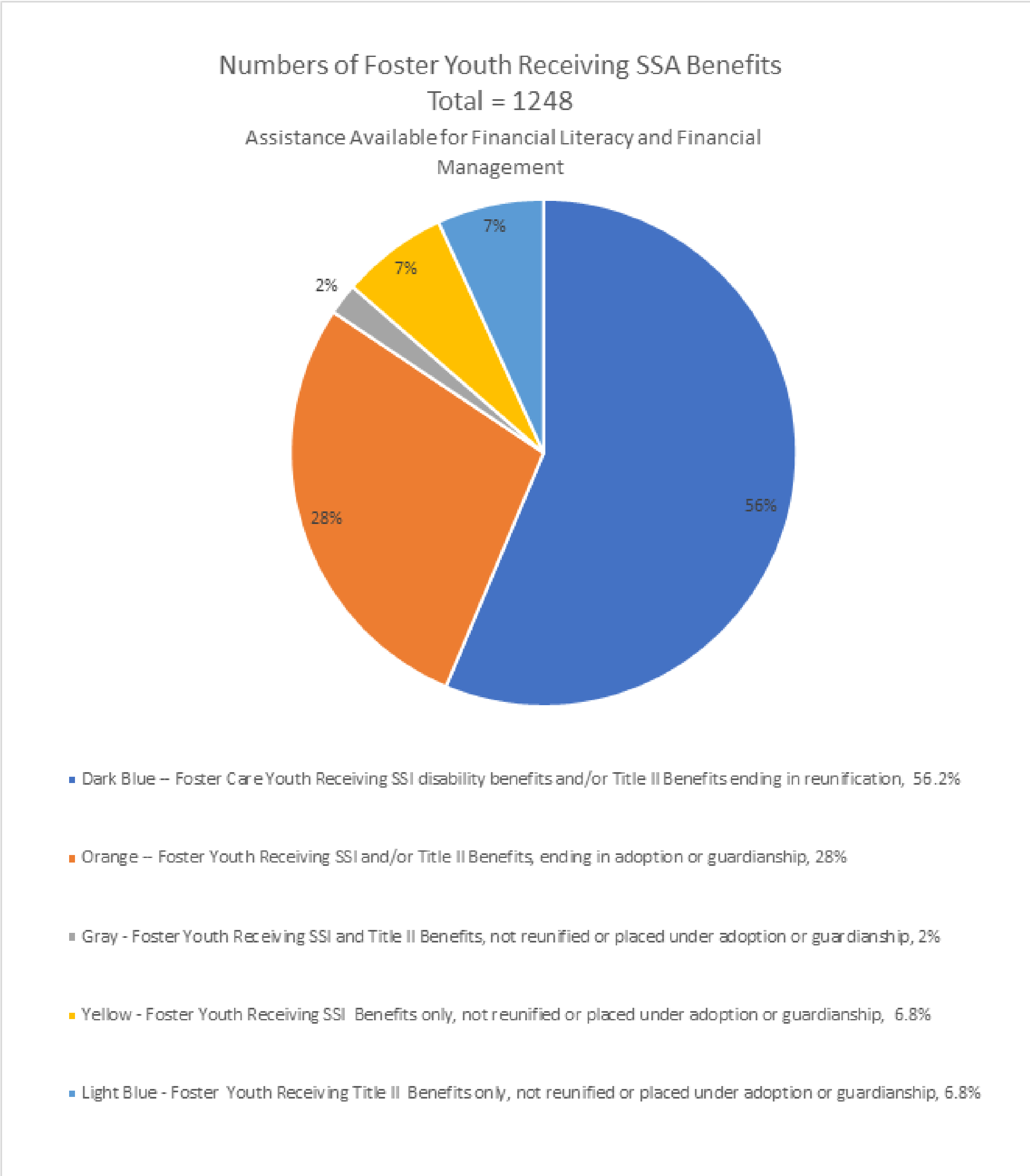
Would preserving federal benefits youth in foster care promote systemic inequity by creating advantages for youth who have disabilities and/or who have lost parents, that will not be enjoyed by other youth in care?

No. In practice, taking the benefits of youth with disabilities or those who have lost parents in Massachusetts, singles them out to pay for their own care, while costs for all other youth are paid for by the state. Federal and state law requires the Massachusetts state foster care agency to pay for the foster care of every child in care. Passing legislation to stop DCF from taking benefits will level the playing field, for young people receiving SSA benefits, who may have increased economic needs upon exiting care. Eliminating this practice of diverting youth's benefits does not perpetuate inequity; it eliminates the inequitable practice of charging one group of youth for their care while paying the cost of other youth.

Black, Latinx, and Native children are disproportionately represented in the foster care system, and even more disproportionately impacted by disabilities.[142] Addressing this issue helps to alleviate the inequity of perpetuating additional financial hurdles for youth who are beneficiaries, particularly for beneficiaries of color.

[142] "Racial Disparities in Access to Supplemental Security Income Benefits for Children", Community Legal Aid, December 202, available at https://clsphila.org/wp-content/uploads/2020/12/Racial-Disparities-in-Access-to-SSI-for-Children-1.pdf

Appendix B: Outcomes for Youth in Foster Care Receiving SSI and Title II Benefits



NOTES RELATING TO CHART OF NUMBERS OF YOUTH IN FOSTER CARE RECEIVING SSA BENEFITS:

Dark Blue: 56.2%

Youth in Foster Care Receiving SSI disability benefits and/or Title II Benefits (based on survivorship or wages of a disabled parent) with foster care ending in **reunification** (Source: 2022 DCF Report, p. 19, based on data for all youth in DCF custody) (est. 701 youth).

Orange: 28%

Youth in Foster Care Receiving SSI and/or Title II Benefits, ending in **adoption or guardianship** (Source: 2022 DCF Annual Report, p. 19) (est. 349 youth).

Gray: 2%

Youth in Foster Care Receiving both **SSI and Title II Benefits**, not reunified or placed under adoption or guardianship, with SSI benefits to be placed in **ABLE accounts** under pending legislation. Remaining Title II benefits are subject to the 2K asset limit. (Calculated using the percentage of youth with placements not ending in reunification, adoption or guardianship (15.8% - see 2022 DCF Annual report, p. 20) applied to total youth in foster care on benefits, 1248, or total of 197 youth, and then applying percentage on both SSI and SSDI recipients as provided in DCF's public records response, or 14.9%) (est. 29 youth**).**

Yellow: 6.8%

Youth in Foster Care Receiving **SSI Benefits only**, not reunified or placed under adoption or guardianship, with SSI benefits to be placed in **ABLE accounts** under pending legislation. (Calculated using the percentage of youth with placements not ending in reunification adoption, or guardianship (15.8% - see 2022 DCF Annual report, p. 20) applied to total youth in foster care on benefits, 1248, or total of 197 youth, and then applying the percentage of SSI only foster care recipients as provided in DCF's public records response, or 42.4%) (est. 85 youth).

Light Blue: 6.8%

Youth in Foster Care Receiving **Title II Benefits only**, not reunified or placed under adoption or guardianship, with SSI benefits to be placed in savings accounts under pending legislation. (Calculated using the percentage of youth with placements not ending in reunification, adoption or guardianship (15.8% - see 2022 DCF Annual report p. 20), applied to total youth in foster care on benefits, 1248, or total of 197 youth, and then applying the percentage of Title II only foster care recipients as provided in DCF's public records response, or 42.6%) (est. 85 youth).

****

Summary of Guardrails Related to Financial Literacy and Financial Management:

Over one-half (56.2%) of all children in foster care will be reunified. An estimated 28% of all youth in foster care will transition to adoption or guardianship. (See **dark blue** and **orange** sections of pie chart.) Therefore, about 84.2% of youth will have the assistance of family or adults in surrogate family roles to assist the child in conserving and managing their SSI or Title II benefits and gaining skills in financial literacy in the years before they transition to adulthood. (SSI benefits would be placed in ABLE accounts. Eligibility for SSI ends at 18 unless the individual is able to establish eligibility under the adult (rather than child) standard. Eligibility for Title II benefits end at 18 unless the child is still in secondary school, in which case benefits continue to age 19.

Of the remaining (approximately) 15% of youth receiving SSI or Title II benefits, those receiving SSI only, or about 85 youth, would have their benefits in ABLE accounts, which limit the types of permissible expenditures (education, food, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses.) (see **yellow** section of pie chart). Approximately 29 youth would receive SSI and Title II benefits. The SSI funds would be protected by the same ABLE account restrictions. The Title II resources could be in savings accounts but must be limited to only $2,000. in order to adhere to the SSI asset limit. (See **gray** section of pie chart).

This leaves only about 85 remaining youth with Title II benefits who would not be reunified or placed for adoption or guardianship. These youth would reach adulthood with the possibility of accessing conserved funds held through childhood and adolescence in savings accounts. (See **light blue** section of pie chart.) The actual number of those who will transition to adulthood at 18 without a continuing relationship to the Department is much smaller. DCF estimates that 73% of youth enter into a Voluntary Placement Agreement continuing their engagement with the Department after 18. (See 2022 DCF Annual Report p. viii.) Applying this percentage to this number of youth (85), we would expect that only about 23 youth in foster care (85 x 27%) would transition at 18 with Title II benefits and without reunification, adoption, guardianship or continued involvement of the Department.

For these 23 youth, there are three additional guardrails in place. First, the Department already obligates social workers to develop **transition plans with youth in foster care** before they age out of the foster care system at 18. (See 2022 DCF Annual Report p. viii.) Ideally, this type of transition work should begin many years before 18. Once DCF is freed of obligations to divert SSA benefits into the General Fund, DCF will have more flexibility in increasing the personal needs account (PNA) of youth in foster care, which has traditionally been limited to 10%. Social workers should attempt to replicate the work of traditional families in the community in helping young people during adolescence gradually begin to manage their own financial resources under supervision. This includes the concept of "dignity of risk", i.e. the ability of young people to exercise autonomy, make their own mistakes, and learn from those mistakes, again with sufficient guardrails in place.

Second, H.157 (lines 106-111) and S.65 (lines 97-102) specifically require **financial empowerment (financial literacy) training and support** to be provided by the Department beginning at 4 years before age 18. DCF must also make this training available to parents, guardians and adoptive parents.

> The department shall provide the child with ongoing financial literacy training and support, including specific information regarding the existence, availability, and use of funds conserved for the child, beginning by age 14. Financial literacy training concerning restrictions on the use of conserved funds shall also be made available to all parents, guardians, and adoptive parents gaining access to funds conserved by the department.

More rigorous financial literacy/empowerment training programs are currently being developed by Friends of Children, https://friendsofchildreninc.org/ for their own clients, based on models which have been successful elsewhere.

Finally, in appropriate cases, **the Department could utilize other tools to limit the use of conserved funds.** For example, some children experiencing foster care may be eligible for ***ABLE accounts even if they do not receive SSI***. If such children have a disability that begins before age 26 that results in a marked or severe functional limitation lasting 12 months or longer, they may be eligible. DCF also might consider use of ***supported decision-making*** for young people transitioning into adulthood. Or, the department might decide to ***conserve the Title II monies in 529 savings accounts for college or other forms of post-secondary education.***

Appendix C: Jurisdictions Implementing Benefit Protections or Introducing Legislation to Protect Benefits (Adapted from the Children's Advocacy Institute at the University of San Diego Law School)

Summary

A number of other jurisdictions, both state and local, that have implemented (or introduced) through legislation or resolution measures that will protect the Social Security benefits of youth in foster care. These bills tend to address three broad areas for children receiving benefits: screening provisions, fund conservation provisions, and notice provisions.

> **Screening and application provisions**: The legislation identifies when a department should screen children in department care for eligibility for SSI or other benefits, what measures should be taken to apply for benefits, and what is involved when the department identifies a representative payee.
>
> **Fund conservation provisions**: The legislation identifies how the department is allowed to use funds to reimburse (if at all) and identifies ways to conserve funds for the future best interests of the youth.
>
> **Notice provisions**: The legislation identifies when the department should notify children, their guardians, their legal representatives, and/or their caregivers of actions taken related to application or conservation of benefits.

Bills offering the most protection to children in foster care and their benefits are those that address all three provisions in the legislation. Most jurisdictions also require some kind of financial literacy training be given to children receiving benefits and/or their guardians and legal representatives, which usually starts around age 14.

Fig. A. Jurisdictions That Have Implemented Benefit Protections

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
Arizona[143]	Initial screening within 60 days for SSA or VA benefits eligibility. Applications required if potentially eligible. An annual review is required to screen for benefits eligibility. Notice as to applications must be provided annually to the child, the child's attorney and parents or guardians.	This measure strikes in its entirety a previous subsection which authorized DCS to use SSA benefits received as a representative payee to defray costs of care. **It now expressly prohibits this as to a child's SSA benefits, other benefits, savings or assets. No percentage may be retained by DCS.** Funds can be used for unmet needs beyond the obligations of DCS but otherwise must be conserved in ABLE accounts, pooled trusts or similar savings tools.	An annual accounting as to the use and conservation of benefits must be provided annually to the child, the child's attorney and parents or guardians. DCS must provide notice of application, denial or appeal to child, child's attorney and (if rights are not terminated) to parent/guardian) and consult as to whether an appeal is in the child's best interests.	Provisions related to DCS releasing funds upon the child turning 18. For children who are currently eligible, DCS must consult with the child, child's attorney as to whether to should apply become representative payee.

[143] Arizona House Bill 2559, now enacted and signed by the Governor.

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
California[144]	Youth in foster care to be screened fort SSI eligibility between 16.6 and 17.5 years of age. Agency must assist with continuing disability benefits eligibility when recipient is an adult.	In its capacity as representative payee, the county shall establish a *no cost, interest-bearing maintenance account for each child/nonminor dependent in department custody*. Interest earned is credited to the account, and the county will keep an itemized current account of all income and expense items for each maintenance account. The county shall also establish procedures for disbursing funds, including disbursing the net balance to beneficiaries upon release from care. Benefits can be used only for the use and benefit of the dependent and for purposes determined	When a foster youth is receiving SSI payments, the county shall do all of the following at least 6 months prior to their 18th birthday: give information to the youth regarding federal requirements to establish continuing disability as an adult for SSI payments to continue past their 18th birthday, information on the process of becoming their own payee or designating an appropriate payee if benefits continue past their 18th birthday, information on any SSI benefits that have accumulated on their behalf. Child, child's attorney, parent or guardian must be told of applications for benefits, decisions and other communication. An accounting is provided upon request for any child aged 12 or older.	

[144] See A.B. 1512, Foster Care Payments Act, currently enacted by the California legislature on September 14, 2023 and awaiting signature of the Governor: https://billtexts.s3.amazonaws.com/ca/ca-analysishttps-leginfo-legislature-ca-gov-faces-billAnalysisClient-xhtml-bill-id-202320240AB1512-ca-analysis-368637.pdf

See also:
https://1.next.westlaw.com/Link/Document/Blob/Ia41ebfa056d711ee82d7b6185170f032.pdf?targetType=pending-pdf&originationContext=document&transitionType=DocumentImage&uniqueId=39dc3d9c-762e-422a-8a5d-e7f2ea5ada51&ppcid=ce04a016426c497c97f1ca2f9f303217&contextData=(sc.RelatedInfo)

See also developments in San Diego, reported in https://www.cbs8.com/article/news/investigations/san-diego-supervisors-suport-putting-stop-to-taking-foster-children-benefits/509-4d545de3-8ba7-49bb-a7cb-24cf06f90574

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
		by the county to be in the dependent's best interest. The county shall establish and maintain a dedicated account in a financial institution for past-due monthly benefits that shall not be used for basic maintenance costs but the following kinds of expenditures: medical treatment, education/job skills training, personal needs assistance, special equipment, housing modification, therapy/rehab, other items/services deemed appropriate by SSA. Benefits cannot be used for costs of foster care. Rep. payee must manage federal asset limits. ABLE accounts, pooled trusts, individual development accounts, PASS plans and other savings vehicles can be used.		
Oregon[145]		Prohibits using SSA funds for child's foster care. Maintenance costs. Separate accounts may be		Discusses savings vehicles such as ABLE and trust accounts, 529 accounts and the state's Uniform Transfers to Minors Act.

[145] See SB 556, now Chapter 576 of 2023, available at https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB556 See also https://gov.oregonlive.com/bill/2023/SB556/

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
		established consistent with fiduciary duties.		
New Mexico[146]				By letter, Governor suspended state's policy of taking SSA benefits; future legislative action anticipated.
Maryland[147]	When applying for benefits the department shall identify a representative payee in cooperation with the child's attorney, according to federal regulations.	When the department serves as representative payee, they shall use and conserve benefits in the child's best interest. When a child reaches age 14, and until the department is no longer their representative payee, a minimum percentage of the child's benefits will not be used to reimburse the state for costs of care, starting at 40% for age 14 and 100% for age 18+. Department monitors any federal asset and resource limits and conserves or uses funds in several possible ways: PASS accounts, 529A plans, individual development accounts, special needs trust, using benefits for special needs services	Department shall **immediately** notify the child through their attorney of any application for benefits made on their behalf, any application for the Department to become representative payee on their behalf, any decisions/communications from the relevant administration regarding application for benefits, and any appeals or other action requested by the department regarding an application for benefits. Department must also, before each juvenile court hearing regarding a child for whom they serve as representative payee, notify the child through their attorney of: dates and amount of benefits received on the child' behalf since any prior notification to the child's attorney, and information	When a child turns 14, the department is required to provide the child with financial literacy training.

[146] Days after learning of the state's practice at a state legislative hearing, New Mexico's acting head of its child welfare agency issued a letter ending this practice. See https://www.abqjournal.com/news/unprecedented-new-mexico-foster-children-will-now-be-allowed-to-keep-federal-benefits-owed-to/article_a8eba052-2fef-11ee-8edb-736b67563b4a.html

[147] Md. Code, Fam. Law § 5-527.1

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
		not already provided by the department, dedicated accounts for back payments as necessary. Annual accounting is provided to the child and their attorney of how funds are used or conserved.	regarding all the child's assets and resources.	
Hawaii[148]	No specific provisions for how/when to screen children for eligibility for benefits.	Department is requested to deposit social security payments for foster children into savings accounts which children may access when they return to their families, are adopted, or age out of foster care.	No specific provisions for notice. Department is requested to immediately cease intercepting social security payments for children in foster care.	This is a concurrent resolution rather than specific and detailed legislation.
Nebraska[149]	No specific provision for how/when to screen children for eligibility for benefits. Broadly, unless a guardian is appointed by a competent court, DHHS takes custody of and exercises general control over assets owned by children	Broadly, for all assets owned by children under department charge, children owning assets shall at all times pay for personal items. Assets over a max of 1,000 and current income are available for reimbursement to the state for cost of care. Assets may be deposited in a checking account, invested in US bonds, or deposited in	When the department serves as a representative payee for a child receiving Social Security benefits, the department shall provide notice, within 30 days of receiving the first benefit payment on the child's behalf, to the child beneficiary in an age-appropriate manner (along with their guardian ad litem) that the department is acting as the child's representative payee for the purpose of	This legislation is part of a broad reimagining of the foster care system in Nebraska.

148 SCR51, Requesting the Department of Human Services to Immediately Cease Intercepting Social Security Payments for Children in Foster Care, available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SCR&billnumber=51&year=2023

149 Nebraska Legislative Resolution 198, available at https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LR198.pdf

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
	under the charge of the department.	a savings account insured by the US government. All income received from investment of assets will be credited to the child. The department makes and maintains detailed records with receipts, investments, and expenditures of assets. On or before 10/1/2023, DHHS shall adopt and promulgate rules and regulations to carry out legislative requirements for the department as a representative payee for a child beneficiary.	receiving social security benefits. The department must also provide notice to the juvenile court at every review hearing regarding the child of the department's receipt and conservation of the child's benefits. This notice shall include the total amount of benefit funds the department has received on behalf of the child as of the hearing, total amount of benefits received on child's behalf that are conserved or unspent as of the hearing, and all accounting records regarding the department's receipt, use and conservation of benefits to the child's beneficiary, parent, or guardian ad litem (upon request from the child, parent, or guardian ad litem and upon termination of the department's role as the representative payee.	
Illinois[150]	Upon receiving temporary custody or guardianship of a youth in care, the department shall assess them for benefit eligibility. If the department	The Department shall set up and administer no-cost, interest-bearing accounts for children the department is legally responsible for and who are eligible for	Department shall immediately notify a youth over age 16, their attorney, guardian ad litem, and their parent/legal guardian/responsible adult of any application	Annually starting Dec. 31, 2023, the department will report on the number of conserved accounts established and maintained for youth, average amount

[150] 20 ILCS 505, Children and Family Services Act, available at https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=242&ChapterID=5

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
	determines the youth may be eligible, an application will be filed on their behalf. Department will determine rules for how it reviews cases at regular intervals to determine whether youth may have become eligible for benefits following initial assessment. When applying for benefits for a youth in care, the department shall identify a representative payee in accordance with federal regulation. If the department is seeking to be appointed as representative payee, they must consider input given from the youth's attorney and guardian ad litem regarding whether another representative payee is available.	Veteran's benefits, Social Security benefits, SSI, Railroad, and other related payments. Interest earned by each account shall be credited to the account unless disbursed. In disbursing funds, the department shall establish standards for disbursing funds, and in all circumstances the department's guardianship administrator must approve disbursements. The department will also calculate monthly amounts paid from state funds for child's board and care, non-Medicaid covered medical care, and social services and utilize funds from the child's account as covered by regulation to reimburse. Monthly disbursements from all children's accounts (up to 1/12 of 13 million dollars) shall be deposited into the General Revenue Fund and balance over 1/12 of 13 mil. Into the children's services funds. Any balance remaining after shall be maintained.	for benefits on their behalf, any application to become representative payee for benefits, any communications from the relevant benefit agency regarding acceptance/denial of benefits or of selection of representative payee, and any appeal or other action requested by the department regarding an application for benefits. Department shall provide annual accounting to the youth's attorney and guardian ad litem of how their benefits are used and conserved. A youth/their attorney/their guardian ad litem can request information on how benefits have been used and conserved, the department shall provide information within 10 business days. This accounting includes amount of benefits received on the youth's behalf since the most recent accounting (and when they were received), information regarding benefits and resources, accounting of disbursement of benefit funds (including date, amount, identification of payee, and purpose), information regarding	conserved by age group, and total amount conserved by age group for the prior fiscal year. Starting by age 14, the department shall provide youths with financial literacy training and support regarding the existence, availability, and use of funds conserved. Legislation also provides that in 2024 the department will report to the general assembly on youth in care who receive benefits not subject to the act, with the goal of expanding conservation of benefits to all benefits of all children for whom the department is representative payee, including any identified obstacles.

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
		When serving as representative payee, the department shall ensure that when a youth turns 14 and until the department is no longer representative payee a minimum percentage of SSI benefits are conserved: at least 40% for age 14, to 100% from age 18. Benefits may be used or conserved by: establishing a PASS account, establishing a 529 plan, establishing an Individual Development account, establishing an ABLE account, establishing a special needs trust, using benefits for services for special needs not already provided by the department, dedicated account if federal law requires it.	each request by youth or relevant guardians for disbursement of funds (and reason for not granting request if applicable), and (when department guardianship is being terminated) a final accounting to SSA/the youth's attorney/the new guardians or the youth themselves information on how to become representative payee.	
Connecticut[151]	No specific provisions surrounding determining eligibility for benefits for children in custody.	Social Security benefit payments must be deposited into a trust account maintained for the purpose of receiving such deposits. Guidelines must be established concerning the	No specific provisions regarding notice that youth or their guardians should receive about applications for or receipt of benefits.	Records must be maintained concerning the total sum and remaining balance of payments deposited on behalf of each youth receiving benefits. The legislation puts the

[151] Substitute for S.B. No. 2, An Act Expanding Preschool and Mental and Behavioral Services for Children, available at https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2022&bill_num=2

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
		management and oversight of such accounts along with permissible and impermissible withdrawals from these accounts by children or guardians. No SSDI benefit received by a child in department care/custody shall be used to offset the cost of their care.		onus on DCF to establish complete policy on management and expenditure of Social Security benefit payments received by or on behalf of youths in DCF custody.
Washington, D.C.[152]	Department must screen all children in foster care for benefit eligibility and once determined eligible, apply for benefits on the child's behalf. Department has to coordinate with the child and legal parental figures to develop a written plan in the child's best interest for future use and control of the child's benefits. If disagreements arise between parties department must consider party preferences.	*Department cannot use SSA benefits to reimburse the district for any costs associated with the child's care.* When acting as representative payee or fiduciary for a child the department will monitor federal asset limits and conserve benefits, including by: establishing a PASS account, *establishing a 529A plan account, establishing an individual development account, establishing a special needs trust (or joining a pooled special needs trust), opening a dedicated account as required.*	Department shall immediately notify the child/their guardian ad litem/their parents/their guardians of any application by the department to become the child's representative payee, any decisions or communications from SSA regarding the child's benefits application, and any appeal by the department regarding the child's benefits application. Department must provide at least once every 6 months an accounting to the child and their guardian including any benefits.	Department will provide at least 5 hours of financial literacy education, financial management training, and financial skills building to anyone gaining first time access to the child's resources Mayor is expected to report to the council on the agency's efforts to conserve benefits of children, including information on how many children receive Social Security benefits, the type of accounts used to conserve benefits, and efforts to educate children and guardians on financial literacy.

152 Preserving Our Kids' Equity Through Trusts (POKETT) Amendment Act of 2022, available at https://trackbill.com/bill/district-of-columbia-bill-857-preserving-our-kids-equity-through-trusts-pokett-amendment-act-of-2022/2264800/

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
Philadelphia, Pennsylvania (local)[153]	Department is authorized to develop and implement procedures to ensure all children are screened for benefit eligibility within 60 days of being committed to department custody. If deemed eligible, the department will apply for benefits in cooperation with the child's attorney/guardian and identify a representative payee of the beneficiary's highest priority in accordance with federal regulations. If there is no other suitable candidate, the department will apply to become representative payee.	When the department serves as representative payee *they shall use or conserve the benefits in the child's interests,* including using benefits for services not otherwise provided for by the department or covered by health insurance, or conserving benefits for reasonably foreseeable future needs. *Child's benefits are not to be used to reimburse the city/county for the costs of care,* or for other payments made by the city to cover any other cost/expense for an individual in DHS custody. The department will monitor asset and resource limits and use/conserve benefits in a way that avoids violating these resource limits, including conserving funds through establishing individual financial accounts in accordance with federal regulations.	Department is authorized to ensure notification to the child through their attorney/guardian of any application, decision, communication, or appeal related to the child's benefits	The department shall collect, maintain, and provide data relating to application, use, and conservation of federal benefits for foster youth in custody through an annual public report.

153 Philadelphia City Council, Councilmember Gym Announces Legislation to Give Back More Than $1 Million Annually to Youth in Foster Care, March 17, 2022, available at https://phlcouncil.com/councilmember-gym-announces-legislation-to-give-back-more-than-1-million-annually-to-youth-in-foster-care/

JURISDICTION	**SCREENING AND APPLICATION PROVISIONS**	**FUND CONSERVATION PROVISIONS**	**NOTICE PROVISIONS**	**OTHER NOTES**
Los Angeles, California (local)[154]	County placing agencies are required to screen all youth over the age of 16 ½ for potential SSI eligibility, and apply on behalf of any youth likely to be eligible for SSI/SSP, with the goal of establishing eligibility by age 18. If a youth is determined eligible for SSI payments and is approaching 18, the county must provide them with information on becoming their own representative payee or designating a payee of their choice, and with information on how to complete SSA's process of maintaining eligibility as an adult.	The Department must ensure that *a no-cost, interest bearing bank account is created for each eligible youth* in care to deposit SSA benefits in that they can access upon exit from care (e.g a CalABLE account). *Procedures must be established to disburse the balance of the account to the youth upon their exit from care*	No specific provisions surrounding notice, but does mention several times that nonminor dependents, or their representatives as appropriate, be made aware of their right to become representative payees while still in department care.	Motion directed DCF to report back within a 60 day period regarding several statistics on benefits and benefit applications for those in care.

[154] Revised Motion by Supervisors Hilda L. Solis and Sheila Kuehl, *Social Security Benefits for Youth in Foster Care*, available at https://file.lacounty.gov/SDSInter/bos/supdocs/159977.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=; Joseph Shapiro, *Los Angeles County Moves To Get More Money Into The Hands Of Foster Youth*, July 16 2021, available at https://www.npr.org/2021/07/16/1016996802/los-angeles-county-moves-to-get-more-money-into-the-hands-of-foster-youth.

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
New York City. New York (local)[155]	New plan to ensure that youth in foster care who are eligible for SSI disability and/or survivor benefits have their benefits promptly applied for to receive benefits when they leave care.	*ACS will establish individual SSA compliant accounts for SSI and RSDI eligible children for up to the legal limit where applicable.*		Not legislation but an internal commitment/policy change from the administration. It also offers training to older youth, their families. And their personal representatives to ensure they understand the SSA requirements to maintain benefits.

Fig. B. Jurisdictions That Have Proposed Benefit Protections

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
Texas[156]	No specific provisions for how/when to screen children in department custody for eligibility for benefits. When a child in department custody receives or is eligible to receive benefits requiring a representative payee or fiduciary,	If the department serves as representative payee or fiduciary for a child, *the department shall reserve a minimum percentage of benefits* for use by the child: at age 14 at least 40%, and 100% by age 18.The department must exercise discretion in accordance with federal law and a child's best interest when deciding to use or save the child's benefits, including using the benefits to address	Department provides immediate notice to the child through their legal representative of any application for benefits made on the child's behalf, any application to become representative payee for the child's benefits (if the department is identified as representative payee), any decisions or communications from the relevant administration	The department must provide financial literacy training for each child who is at least 14.

155 Administration for Children's Services Announces Plan to Ensure Youth in Foster Care Who Are Eligible for Social Security Income Have Benefits in Place & Can Receive Those Funds, available at https://www.nyc.gov/assets/acs/pdf/PressReleases/2021/SocialSecurityIncome.pdf
156 HB 4244, available at: https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB4244

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
	the department shall in cooperation with the child's attorney select an appropriate individual to serve as representative payee, according to federal regulations. If the department and the child's legal representative disagree, the department shall request a hearing to determine an appropriate individual. The department may be named as representative payee/fiduciary if the court does not identify an appropriate individual.	the child's special needs and saving the benefits for the child's reasonably foreseeable future needs. The department must monitor federal asset/resource limits and has the following options to use or save the benefits in the child's best interest: *PASS accounts, ABLE accounts authorized by 529A, individual development accounts, special needs trusts,* paying for the child's needs not otherwise provided by the department, dedicated account if federal law requires it for back payments, any other exclusions from federal asset limits available under federal law. Annual accounting is provided to the child and their legal representatives regarding the use and saving of resources in accordance with this section.	regarding an application, and any appeal/other action requested by the department regarding a benefits application. Prior to each placement review hearing, if the department serves as the representative payee or otherwise receives benefit's on the child's behalf, the department shall provide notice to the child through their legal representative of the following: amount of benefits received on the child's behalf since the most recent notification to the legal representative (and when benefits were received), information regarding the child's assets and resources, an accounting of the disbursement of benefit funds (with the date, amount, and identity of payee), and information regarding each request by the court appointed special advocate for the child for the disbursement of funds, and a statement regarding the department's reasons	

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
			for not granting the request if applicable.	
Minnesota[157]	Financially responsible agency must assess whether each child the agency is responsible for is eligible to receive SSI benefits. If a child placed in foster care is eligible to receive benefits the agency must: apply to be the payee for the child for the duration of their placement in foster care, within 90 days of receipt remit all benefit payments received as payee to the Commissioner of Human Services along with documentation identifying the child and the amounts received, and retain all documentation related to benefits received for a beneficiary for at least five years after the agency is	*The state establishes an SSI trust for foster children,* consisting of deposits made by the Commissioner, that must be managed to ensure stability and growth. *All benefit money sent to the Commissioner must be deposited in this trust.* Assets within the trust are held for the exclusive benefit of beneficiaries, are not subject to claims by state creditors, are not part of the general fund, and are not subject to appropriation by the state. Once a beneficiary has reached age 18, the Commissioner shall disburse $10,000 every year to the beneficiary until their account is depleted. Disbursements will include information about potential tax and benefit consequences.	If a child placed in foster care is eligible to receive SSI benefits, the agency must notify each beneficiary above the age of 18 that they may be entitled to disbursements pursuant to the foster children SSI trust and inform children how to contact the Commissioner. For each beneficiary between ages 14 and 18, the Commissioner must by Feb. 1 each year notify the beneficiary of the amount of benefits received on their behalf in the prior calendar year and the tax implications of these benefits.	This legislation applies **only** to SSI benefits. Minor beneficiaries who are at least 14 may petition for the Commissioner to disburse funds or expend funds from the trust for the beneficiary's benefit. The Commissioner has several duties pertaining to this legislation: keep a record of the receipts and disbursements of the trust and a separate account for each beneficiary, determine annual interest earnings of the trust, and apportion annual capital gains earnings to separate beneficiaries' accounts.

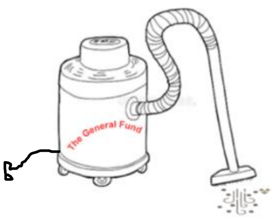
[157] HF 4267, available at: https://www.revisor.mn.gov/bills/text.php?number=HF2467&version=latest&session=92&session_number=0&session_year=2023

JURISDICTION	SCREENING AND APPLICATION PROVISIONS	FUND CONSERVATION PROVISIONS	NOTICE PROVISIONS	OTHER NOTES
	no longer financially responsible for the beneficiary.			

Appendix D: Fact Sheet H.157/ S.65

AN ACT PROTECTING BENEFITS OWED TO FOSTER CHILDREN (H.157, S.65)

SPONSORS: Representative Farley-Bouvier, Senator Comerford
THE PROBLEM: Yearly, almost 1,250 children and young adults in DCF custody receive Social Security benefits due to a disability or surviving the death of a loved one.[158] However, **DCF siphons about 90% of the children's benefits into the Commonwealth's General Fund.**[159] This amounts to just under $500,000 per month or over $5.5 million dollars per year.[160]



Almost $500K per month, or $5.5 million dollars per year in Social Security Administration benefits of youth in foster care *are taken for the General Fund.*

Without these funds, **youth that age out of the system are at risk of homelessness, incarceration, and further trauma**. In 2015, for transition-age youth in foster care in MA:

- more than a quarter **had not finished high school or gotten a GED** at age 21;
- nearly half **did not have full or part-time employment** at age 21;
- more than a third **had experienced homelessness** at age 21;
- 15 percent **had been recently incarcerated** at age 19; and
- 10 percent **had been recently referred for substance use treatment** at age 21.

We need to: 1) **stop taking benefits from foster children**; 2) **support responsible caregivers able to act as representative payees**; 3) **help children to leave foster care with financial support**; and 4) **ensure transparency for children**, their guardians, and their legal representatives when their benefits are at stake.

THE SOLUTION: ***An Act Protecting Benefits Owed to Foster Children.*** This act draws upon legislation adopted in other jurisdictions to protect the benefits of youth in DCF custody in MA.
These reforms include:

- **Prohibiting** DCF from depositing the SSA benefits of youth in foster care into the General Fund. (DCF would also be prohibited from using SSI/RSDI benefits to offset costs of providing foster care, costs that DCF is already obligated to pay under federal and state law);
- **Retaining** a minimum of 10% of benefits into a personal needs account for the child;

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[158] From DCF records, 1/22 to 11/22, furnished in response to DLC public records request.
[159] From DCF records, 1/22 to 11/22, furnished in response to DLC public records request.
[160] From DCF records, 1/22 to 11/22 furnished in response to DLC public records request.

- **Establishing** savings or other accounts to conserve the balance of children's benefits, so that they can successfully transition into adulthood and independent living;
- **Providing** ongoing financial literacy training and support to children in DCF custody;
- **Requiring** DCF to screen children for SSI/RSDI benefit eligibility within sixty days of the child being committed to custody;
- **Requiring** DCF to consider preferences for other representative payees per federal regulations;
- **Requiring** DCF to notify children; their legal representatives; and their guardians when the Department applies for benefits or to be the child's representative payee; and
- **Requiring** DCF to maintain detailed accounting of a child's benefits, and to provide a quarterly report to the child and their representatives when DCF serves as representative payee.

Passing this bill would ensure that children **receive the benefits that they are legally entitled to** and **support financial independence** for transition-age youth and their caregivers.

Other jurisdictions have prohibited or regulated similar practices of foster care agencies. These include, but are not limited to the following:

- Laws in Arizona, Oregon, Connecticut, Hawaii and Washington, D.C. **prohibit the child protection agency from using Social Security benefits to reimburse itself** for the child's care and **require benefits be placed in a savings account** for the child. A similar bill in California is awaiting signature by the Governor.
- Arizona, Illinois and Washington, D.C. **require the agency to screen children for benefit eligibility**.
- Illinois and Maryland require the child protection agency **to conserve an increasing percentage of benefits for the child** as the child grows older.
- Arizona, Illinois, Maryland and Washington, D.C. require the child protection agency to **give notice to children of applications for benefits, applications to be representative payee, and communications from the relevant agency.** Nebraska and Illinois also require **notices to the child and their legal representative**.
- Arizona, Nebraska, Illinois, and Washington D.C. require **regular accounting of a child's benefits**.
- New York City announced last year it will **stop taking children's Social Security benefits and will place the funds in saving accounts** for foster children. Los Angeles County passed a resolution requiring **Social Security benefits be placed in a saving account** for the child when they leave care. Philadelphia enacted legislation to **prohibit the city from using the child's benefits to reimburse the city** or county for the child's care and **requires the agency to use or conserve benefits**.

Youth placed into foster care in Massachusetts deserve no less.

For more information,

Please read: https://www.npr.org/series/1078304434/the-hidden-bill-for-foster-care

***Please contact*:**

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Committee for Public Counsel Services:
Lisa Hewitt, 617-910-5717, lhewitt@publiccounset.net.

Endorsing Organizations:

Disability Law Center
Committee for Public Counsel Services
Mental Health Legal Advisors Committee
Citizens for Juvenile Justice
More Than Words
HopeWell
Friends of Children
Massachusetts Advocates for Children
GLBTQ Legal Advocates and Defenders
Louis D. Brown Peace Institute
Children's League of MA

Appendix E: Infographic H.157/ S.

Stop DCF from Taking Federal Benefits of Youth in Foster Care

A look at the numbers:

Nearly 1,250 children in foster care are eligible for federal Supplemental SSI or RSDI benefits, largely due to disability or the death of a parent.

However, DCF currently takes up to 90 percent[1] of this money for the benefit of the Commonwealth. Like other states, we can change this to ensure that the benefits of youth in foster care are saved for their transition to adulthood.

Under H.157 and S.65, DCF will be required to:

- Screen a child for benefit eligibility when they enter care;
- Notify the child of eligibility, DCF applications to be representative payee, and the amounts received annually; and
- Conserve SSA benefits and manage savings to made available to youth in foster care after they reach adulthood.

$5,500,000

The estimated amount of SSI and RSDI benefits that DCF diverted into MA's state coffers (General Fund) in 2022 [2] These funds can create a bridge of support & stability for a new adult, including:

Sponsors:

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Representative Tricia Farley-Bouvier
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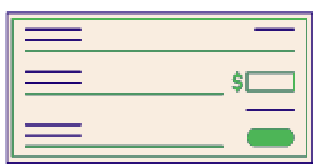
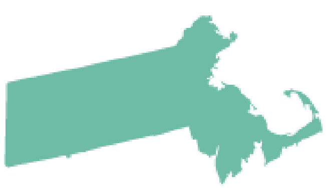
Where do SSA benefits of youth in foster care go?

When DCF is a representative payee of a child in foster care, DCF receives their full benefit payments from SSA [3]





90%

10%

90% of a child's disability or survivor's benefits are **absorbed into MA's General Fund.**

10% of a child's benefits **go into a Personal Needs Account for the child to use**

Endorsing Organizations:

Disability Law Center | Committee for Public Counsel Services | HopeWell | Children's League of MA | Friends of Children | Mental Health Legal Advisors Committee | Massachusetts Advocates for Children | Louise D. Brown Peace Institute I Citizens for Juvenile Justice I GLBTQ Legal Advocates and Defenders I More Than Words

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[1, 3] See 110 C.M.R. § 4.05 (2023).
[2] From DCF records, 1/22 to 11/22, furnished in response to DLC public records request.

Appendix F: Resources on Representative Payee and SSA Benefit Issues.

Social Security Guidance (Including Program Operations Manual System) (POMS):

- GN 00502.107 The Representative Payee Application (available at: https://secure.ssa.gov/poms.nsf/lnx/0200502107)
    - Detailing the process of application for foster care providers, family members and others seeking to become a representative payee.
    - The process generally requires an in-person appointment. Getting an in-person appointment for anything can take some time – as does processing anything at SSA Field Offices. If there is dire need, the process can be escalated.
- GN 00503.100 Advance Notice (available at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0200503100)
    - Detailing who gets notice in payee appointment decisions.
- GN 00503.110 Appeal Rights (available at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0200503110)
    - Detailing what is appealable and who can file an appeal of a representative payee appointment.
    - Note that among those who can appeal on behalf of a minor child is a parent with or without custody who has not lost parental rights.

    - The appeal period is 65 days from the date on the notice. Appealing within 10 days (15 days from the date on the notice) stops the decision from taking effect pending the decision on the appeal. It's possible good cause for late appeal could be alleged, if necessary, e.g., for lack of notice/info about decision.
- GN 00502.159 Additional Considerations When Foster Care Agency is Involved (available at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159)
    - Detailing SSA's policies and procedures for selecting a representative payee when foster care agencies are involved.
- SI 00830.410 Foster Care Payments https://secure.ssa.gov/poms.nsf/lnx/0500830410
- SSA order of preference for representative payees: 69 FR 60232 (2004); 85 FR 7664 (2020).
- HHS/DCF subregulatory guidance (2023): https://www.acf.hhs.gov/sites/default/files/documents/cb/ssa-hhs-joint-letter.pdf
- New SSA Guidance on selection of representative Payee (In Program Operations Manual System)(POMS) (2023): https://secure.ssa.gov/apps10/reference.nsf/lnx/09072023080128PM?opendocument=&utm_medium=email&utm_source=govdelivery

General:

- Children's Advocacy Institute at the University of San Diego School of Law, "Preserving Federal Benefits of Foster Youth," the most extensive compilation of related research, practice and policy materials , is available at https://www.sandiego.edu/cai/advocacy/youth-benefits/
- *The Fleecing of Foster Children*, Children's Advocacy Institute at the University of San Diego School of Law. and First Star, 2011, available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf
- Marshall Project Guide: Were You Ever in Foster Care? Here's How to Find Out if the Government Took Your Money (available at: https://www.themarshallproject.org/2021/04/22/were-you-ever-in-foster-care-here-s-how-to-find-out-if-the-government-took-your-money)

Other:

- SAMHSA FAQ https://soarworks.samhsa.gov/article/child-ssi-spotlight-on-applicants-in-foster-care
- GAO Report on Data Exchanges: https://www.gao.gov/products/gao-21-441r

ABLE Accounts:

IRS Regulations and Guidance:
https://www.federalregister.gov/documents/2020/11/19/2020-22144/guidance-under-section-529a-qualified-able-programs#:~:text=Section%20529A%20provides%20rules%20under,to%20meet%20qualified%20disability%20expenses

Massachusetts Law, Guidance, and Policies:

- G.L. 15C, sec. 29
- https://www.fidelity.com/able/attainable/overview
- https://www.mefa.org/save/able-account