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THE CENTER FOR THE RIGHTS OF ABUSED CHILDREN

Protecting the Federal Benefits of Children in Foster Care

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The Problem

Under federal law, many foster children are owed survivor benefits (including social security and veterans benefits) if their parents died, or if they have a disability (social security income).¹ Many states apply for foster children's benefits as the "representative payee" (often without the youth or their attorneys knowing) and then use those benefits to reimburse themselves for the cost of foster care.

- A 2021 Marshall Project and NPR [review](#) determined that child welfare agencies in 36 states routinely apply to the Social Security Administration to become the foster child's financial representative and take their benefits.²
- The Government Accountability Office [found](#) that child welfare agencies were the representative payee for 81% of the foster children receiving Social Security benefits in states that were reporting data.³ As a result, child welfare agencies have taken nearly \$180 million annually from foster children, many of whom never know about it.⁴
- According to Children's Action Alliance, approximately 10-12% of foster youth receive disability, survivor, or veterans' benefits. Closer to 20% are eligible. The annual average disability benefit per youth ranges from \$700-\$850/month.
- Federal law neither endorses nor prohibits this practice explicitly, though existing Social Security [regulations](#) clearly prohibits the status quo of automatically designating states as the representative payee: "Foster care agencies have traditionally been among SSA's most dependable payee; however, their appointment as rep payee is not automatic. You must decide each case individually and consider other concerned relatives as possible payee choices."

Proposed Solution

Prohibit state or local government agencies from using Social Security survivor or disability benefits to reimburse the state for providing foster care.

Several jurisdictions have sought to address this problem by allowing foster care agencies to keep only part of children's benefits or broadly prohibiting agencies from taking benefits if they fail to list how benefits should be conserved. The ideal legislation, however, would decisively protect children's benefits from agency seizure. Reform would specifically:

- Prohibit the state from using a child's benefits to reimburse the cost of foster care.

¹ "SSI Federal Payment Amounts for 2023," Social Security Administration, <https://www.ssa.gov/OACT/COLA/SSI.html>.

² Joseph Shapiro, "State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care," 2021, <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>.

³ "Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries," Government Accountability Office, <https://www.gao.gov/assets/gao-21-441r.pdf>.

⁴ "Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions," Congressional Research Service, 2021, <https://crsreports.congress.gov/product/pdf/R/R46975>.



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- Instruct the state to conserve children’s benefits in accounts for them to use when leaving care and to avoid transgressing federal resource limitations. This will help young people finance life-changing activities such as buying a car, supporting their children, starting a business, paying for college, or securing safe and stable housing.
- Further, foster youth should be informed and counseled of their rights, and intended use or conservation of their benefits, and have an opportunity to be heard.

Legislation and Supporters

There have been unsuccessful efforts to halt the practice—led in part by Amy Harfeld at the [Children’s Advocacy Institute](#), and [Dan Hatcher](#), a law professor at the University of Baltimore law school—and introduced in recent congressional sessions.

- Rep. Danny Davis proposed the Protecting Foster Youth Resources to Promote Self-Sufficiency Act in 2022 ([HB 9654](#)), 2018 ([HR 7296](#)), and 2016 ([HR 5737](#)).
- This reform would prohibit states using children’s benefits to cover public expenses, require that every foster child and their lawyer be regularly notified about their benefits, offer protected trust accounts to hold the money in until recipients reach adulthood, and require that states continue to screen foster children for Social Security eligibility.

While Congress considers reforming this process, states have begun moving to protect children’s social security benefits.

- Pending Arizona [HB 2559](#) and [SB 1430](#) would halt the practice of using these funds to reimburse foster care and requires placing the money into an account for children.
- [Maryland](#) passed the first state bill to limit the practice in 2018.
- In 2021, [Texas](#) introduced a bill similar to Maryland’s which stalled, and the City of Los Angeles passed a [motion](#) regarding data and setting up accounts.
- New York City [announced](#) in 2021 that they will *voluntarily* stop collecting all of the Social Security checks from children in foster care and instead place the money in savings accounts that children can access when they leave foster care.
- In 2022, [Nebraska](#), [Connecticut](#), and [Illinois](#) passed bills ranging from data collection and administrative development to partial limits on the practice. Also in 2022, passed a resolution signaling forthcoming legislation.
- In 2022, introduced legislation in [Connecticut](#), [Minnesota](#), [Hawaii](#), [California](#), and [Philadelphia](#) would have varying impact, and at least 5 other states/jurisdictions pursued reform.
- Washington DC council introduced the [Preserving Our Kids’ Equity Through Trusts Amendment Act](#) (POKETT) replacing the dollars appropriated from children with local funding and conserve children’s benefits in accounts that avoid transgressing federal resource limitations.

Further, this issue has wound its way into the courts, with mixed results. The Supreme Court made a limited unfavorable ruling in [2003](#), while state courts acting in favor of children in [North Carolina](#), [Maryland](#), and [Alaska](#). A pending appeal in [Alaska](#) will determine the extent of the court’s ruling on behalf of stronger notice and due process for children (The Center joined two amicus briefs, explaining why the current practices by states are unconstitutional).