

# HOUSE BILL REPORT

## 2SHB 1405

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**As Passed House:**

March 4, 2023

**Title:** An act relating to preserving public benefit payments to people in the care of the department of children, youth, and families.

**Brief Description:** Preserving public benefit payments to people in the care of the department of children, youth, and families.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Alvarado, Farivar, Taylor, Reeves, Senn, Mena, Berg, Cortes, Simmons, Berry, Ortiz-Self, Goodman, Lekanoff, Gregerson, Ramel, Macri, Reed, Ormsby, Doglio, Chopp and Santos).

**Brief History:**

**Committee Activity:**

Human Services, Youth, & Early Learning: 1/24/23, 2/3/23 [DPS];

Appropriations: 2/15/23, 2/21/23 [DP2S(w/o sub HSEL)].

**Floor Activity:**

Passed House: 3/4/23, 78-17.

**Brief Summary of Second Substitute Bill**

- Prohibits the Department of Children, Youth, and Families (DCYF) from applying benefits, payments, or funds paid to, or on behalf of, a person in the care of the DCYF as reimbursement for the cost of care, and instead requires conservation of funds for the future use of the beneficiary.
- Requires the DCYF to develop and implement a financial literacy training and provide the training to specified persons leaving the care of the DCYF.
- Creates a cost of care work group within the DCYF to consider how other states and jurisdictions are addressing, and make recommendations regarding, issues related to conservation of funds on behalf of persons in the DCYF's care.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Callan, Dent, Goodman, Ortiz-Self and Rule.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Walsh.

**Staff:** Omeara Harrington (786-7136).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services, Youth, & Early Learning. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Chandler and Schmick.

**Staff:** Jackie Wheeler (786-7125).

### **Background:**

#### Children in the Care of the Department of Children, Youth, and Families.

A child may come into the care of the Department of Children, Youth, and Families (DCYF) through the child welfare (dependency) system, or through the juvenile justice system.

Anyone, including the DCYF, may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents. When children are removed from the home of a parent or guardian during dependency proceedings, they may be placed in an out-of-home placement with relatives or with a foster parent licensed by either the DCYF or a private child-placing agency. Monthly foster care maintenance payments are provided to licensed caregivers to assist in meeting the needs of children in foster care.

The DCYF operates juvenile rehabilitation institutions for juveniles convicted of crimes and sentenced to more than 30 days of confinement. The DCYF also operates community facilities for youth convicted of crimes, which are less restrictive settings that allow youth to begin transitioning back to the community, and include treatment, education, and vocational services. To be eligible for community facility placement, a youth must be placed on minimum security status.

Funds of Children in the Care of the Department of Children, Youth, and Families.

The Secretary of the DCYF (Secretary) is the custodian of funds for persons placed with the DCYF. As custodian, the Secretary has the authority to disburse moneys from the person's funds for certain designated purposes, including for the personal needs of the person or to reimburse for public assistance expended on behalf of the person, which may include funds paid for the cost of the person's care. When the conditions of placement no longer exist, the Secretary must deliver all remaining funds to the person along with a full and final accounting of all receipts and expenditures.

According to the DCYF's policies, when a child comes into the care of the DCYF, the child's caseworker makes an assessment to determine whether the child is eligible for certain public benefits. If so, the caseworker facilitates the application for benefits, and changes the representative payee for benefits to the DCYF.

**Summary of Second Substitute Bill:**

Beginning July 1, 2027, the DCYF may not apply any benefits, payments, funds, or accrual paid to, or on behalf of, a person in the DCYF's care as reimbursement for the cost of care. Funds must instead be conserved for the future use of the beneficiary. The DCYF must also assess whether a person in the care of the DCYF is eligible for public benefits.

The DCYF must develop and implement a financial literacy training, including information related to public benefits. This training must be provided to persons exiting the care of the DCYF when the person is over the age of 16, is receiving or may be eligible to receive benefit payments, and is likely to have the ability to participate in the management of their benefit payments in the future.

The Cost of Care Work Group (Work Group) is created within the DCYF. The Work Group must consider and analyze how other states and jurisdictions are addressing, and make recommendations regarding:

- how the DCYF can conserve funds from public benefits for the future use of people in the care of the DCYF while maintaining eligibility for public benefits;
- how an appropriate representative payee can be established on behalf of a person eligible to receive benefits;
- the age at which a beneficiary may have access to their benefits;
- preliminary cost estimates and a timeline for the DCYF to discontinue applying

- benefits, payments, funds, or accrual paid against the cost of care and how to conserve those funds for the future use of people in the care of the DCYF;
- who, if anyone beyond the beneficiary, should be notified when a person's eligibility is determined;
  - how often the DCYF must assess whether a person in the care of the DCYF is eligible for Social Security Administration (SSA) or other public benefits; and
  - a process for ongoing monitoring of the DCYF compliance with the requirements of the bill.

The DCYF must convene the Work Group and hold the first meeting by September 1, 2023. The Work Group must include, but not be limited to, the following members:

- one or more experts familiar with Social Security Survivor benefits, Veteran Survivor benefits, Railroad Retirement Survivor benefits, or other similar cash benefits;
- one or more advocates for individuals with intellectual or developmental disabilities;
- current or former youth with intellectual or developmental disabilities, who are in or have been in the care of the DCYF, who receive or may be eligible to receive federal Supplementary Security Income (SSI) benefits;
- the Secretary of the Department of Social and Health Services, or his or her designee; and
- the Director of the Health Care Authority and his or her designee.

The Work Group must additionally seek input from: (1) individuals who are eligible for public benefits who have lived experience in the child welfare and juvenile rehabilitation systems; (2) the parents and the caregivers of people who are eligible for SSI benefits or other similar federal benefits and are involved with the child welfare system or juvenile rehabilitation; (3) and the SSA.

By December 1, 2024, the DCYF must submit a report to the Legislature and the Governor with recommendations from the Work Group, information on the cost of implementing the required changes, and whether statutory changes are needed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Human Services, Youth, & Early Learning):**

(In support) When a child or youth is placed in the foster care system, their safety and well-being becomes the state's responsibility. Ten to 15 percent of youth in foster care receive some sort of federal benefit. Those benefits belong to that youth, but the DSHS garnishes those benefits, often without consent or knowledge, and uses them for the cost of care. This

is a legal practice, but it is not right and it is not in the child's interest. This practice has been a pervasive issue across the country. Taking the benefits of these youth when the state is paying for everyone else's care is counter to equity. When Washington acts as the legal parent, it should advance the same goals as other parents do for their children. Young people should not be expected to care for themselves when they are the state's responsibility.

This policy would preserve funds for and provide financial literacy training to affected youth. Preserving benefits for youth is part of the larger goal to increase economic opportunity for youth leaving the foster system. This population has high rates of homelessness and incarceration when they leave foster care. Families entangled in the child welfare system struggle with poverty. Children who have survivor and disability benefits need to use this money to meet basic needs. In one case where benefits were transferred during dependency, it was difficult to get them transferred back when the dependency ended. Taking this money is a nominal reimbursement to the state, but it makes a big difference to the child. Many children in foster care have developmental disabilities. There are special accounts set up for children with these conditions already in which the money could be preserved for the children. This is a strategic priority to help support the transitions of young people. Last year, Washington's parent pay statute for juvenile rehabilitation was repealed. This is the next step.

(Opposed) None.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) The state's practice of garnishing federal benefits and other assets of children in foster care who are eligible due to their low income and disability is problematic and harmful. Dependent children and youth do not have a debt obligation to pay for their care. When these young people exit the foster care system, they do not have funds and end up homeless. Many of these young people do not know that they are eligible for benefits and therefore do not know that the funds that should be going to them are instead routed to the agency that removed them from their family.

As the entity entrusted to protect the best interest of foster children and youth, the DCYF should ensure that these funds are accessible to the child. If current maintenance costs are otherwise provided for, the payee must preserve these benefits or use them for needs that the state is not already obligated to pay. The state should be paying for the child they are supporting and conserve these benefits on behalf of the beneficiary for when they leave foster care. We have accounts specifically for this purpose for people with disabilities and that is where these funds should go.

So much has been taken from these young people and this bill helps alleviate some of the burden for them so this is not something else they have to pay for. We must do our due diligence as a state and as a community to take care of these young people who are our

responsibility. The bill's formation of a cost of care workgroup is also a promising step forward to unpacking complex financial issues that will arise when the DCYF ends this practice.

(Opposed) None.

**Persons Testifying (Human Services, Youth, & Early Learning):** Representative Emily Alvarado, prime sponsor; Amy Hafeld, Children's Advocacy Institute; Amanda and Stebbins Ullrich, LLP; Diana Stadden, The Arc of Washington State; Annie Chung; Sam Martin, S.D. Martin Consulting; and Allison Krutsinger, Department of Children, Youth, and Families.

**Persons Testifying (Appropriations):** Erin Shea McCann, Legal Counsel for Youth and Children; Diana Stadden, The Arc of Washington State; Sam Martin, SDM Consulting.

**Persons Signed In To Testify But Not Testifying (Human Services, Youth, & Early Learning):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.