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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

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1. Introduction

As of September 2020, there were approximately 400,000 children in the foster care system; 10% of these children are entitled to some form of Social Security benefits that they do not receive despite it being considered their property.1 In an investigation by The Marshall Project and NPR, it was found that a majority of the states and Washington, D.C., not only reimburse themselves using the child's benefits but actively seek out youth in the system that may qualify for government benefits, all without letting the child or their legal representation know about these benefits.2 Each year, the foster care agencies take at least $250 million from foster children receiving Supplemental Security Insurance (SSI) and/or Old-Age, Survivors, and Disability Insurance (OASDI)?benefits that are the property of these children.3 The foster care agenciesdo this all legally under the Social Security Act as the child's representative payee, which was upheld as not in violation of the Social Security Act Anti-Attachment Provision, in the 2003 Supreme Court case Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler.4

This note explores the Keffeler decision itself, the questions that remain following Keffeler regarding the ethics and negative social consequences in continuing to allow child welfare agencies to act as the child's representative payee, and recent federal and state cases. Next, this note will examine the child welfare reform movement, the shift to the privatization of the state and local foster care agencies, and the devastating effects of the privatization on foster youth. Lastly, this note will consider Maryland's recent legislation limiting the amount of money the agencies can take from a child to reimburse themselves, what other states need to do in order to do what is actually in the best interest of the child, and how life changing saving and investing the benefit payments for the foster youth after they age out of the system.

1 U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE AFCARS REPORT: PRELIMINARY FY 2020 ESTIMATES AS OF OCT. 4, 2021 ? NO. 28 (2021).2 Eli Hager & Joseph Shapiro, State Foster Care Agencies Take Millions Of Dollars Owed to Children In Their Care, NPR (Apr. 22, 2021), https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of- dollars-owed-to-children-in-their-ca.3 DANIEL L. HATCHER, THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA'S MOST VULNERABLE CITIZENS 80 (2016).4 Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371 (2003).

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