

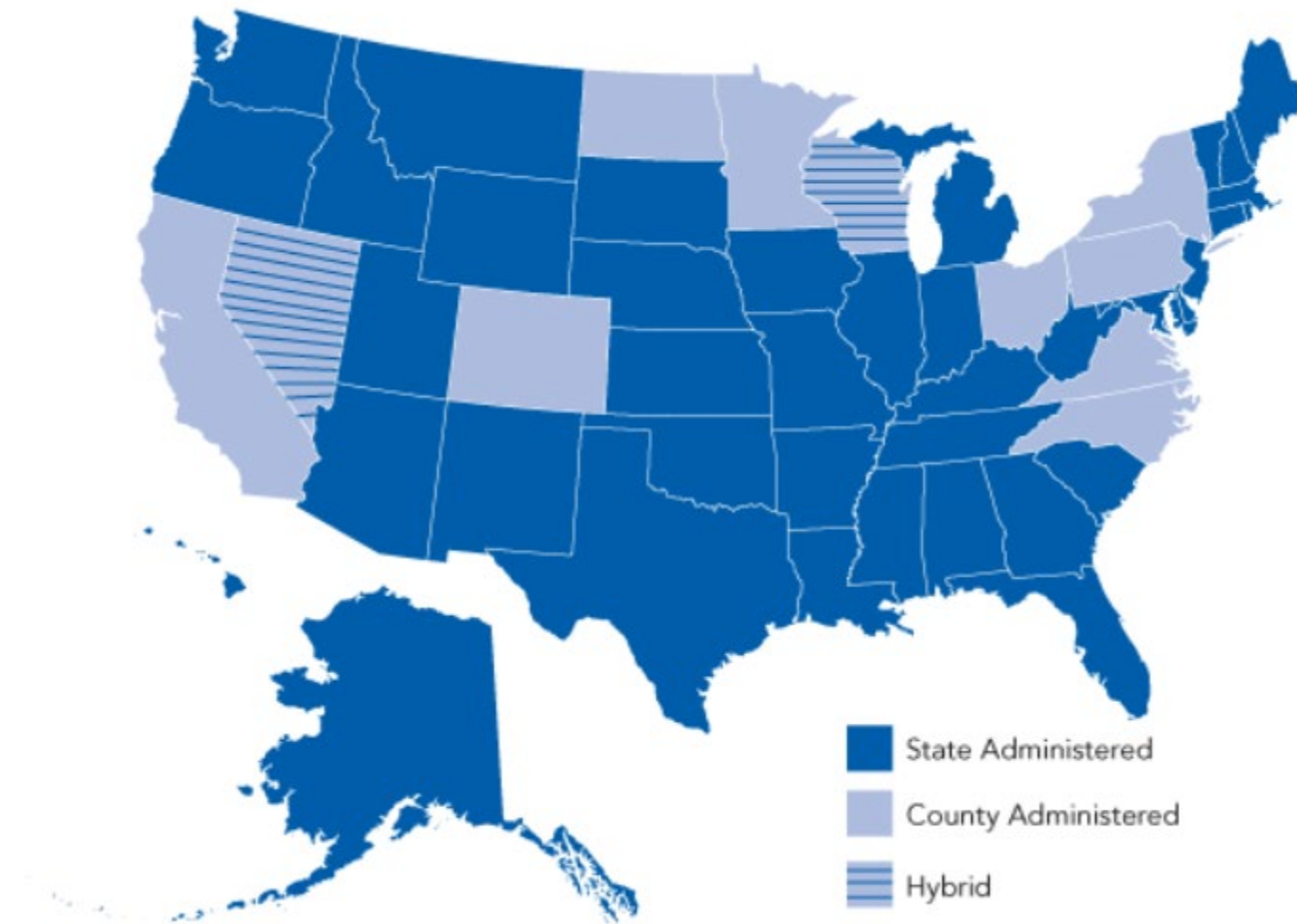
The Structure of the NC Child Welfare System



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State Supervised, County Administered System



What does this mean?

- The federal government authorizes national programs and a majority of the funding for these programs
 - US HHS oversees [Work First](#), [Child Welfare](#), [Child Care](#), [Child Support](#), [Adult and Family Services](#), [Low Income Energy Assistance](#), and [Medicaid](#).
 - The USDA oversees [Food and Nutrition Services](#).
- In North Carolina the single oversight agency is NCDHHS
- The 100 local county departments of social services deliver the services and benefits.



ADMINISTRATION FOR
CHILDREN & FAMILIES



Framework in North Carolina

- **N.C. Gen. Stat. § 143B-153 “created the Social Services Commission of the Department of Health and Human Services..... The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina”.**
- **10A NCAC Chapters 05, 06, 67, 68, 69, 70*, 71*, 72, 97**

Framework in North Carolina

- N.C. Gen. Stat. § 108A-1 requires every county shall have a board of social services, consolidated human services board, regional board, or board of county commissioners which shall establish county policies for the programs established ***in conformity with the rules and regulations of the Social Services Commission*** and ***under the supervision of*** the Department of Health and Human Services.
- N.C. Gen. Stat. § 108A-14(a)(5) states the county director of the social services shall “act as ***agent*** of the Social Services Commission and Department of Health and Human Services in relation to work required by the Social Services Commission and Department of Health and Human Services in the county.”

“Based on the clear statutory scheme, along with the mandatory administrative regulations and the Family Services Manual, the Department of Human Resources had substantial and official control over the provisions of child protective services and designated the county director as the person responsible for carrying out the policies formulated by the Department.”

Gammons v. North Carolina Department of Human Resources, 344 N.C. 51, 63, 472 S.E.2d 722, 729 (1996)

****Department of Human Resources is the predecessor agency to NCDHHS**

Child Welfare Litigation in the last 7 years (larger settlements)

- \$125,000
- \$400,000
- \$460,000
- \$962,500
- \$250,000
- \$220,000
- \$850,000
- \$1,000,000
- \$750,000

Monitoring and Corrective Action – Overview

- Many sources of both qualitative and quantitative data are considered in determining a program's performance.
- Corrective action plans may be required when poor practice or lack of adherence to law and policy have resulted in poor outcomes.
- When a corrective action plan is required, NCDSS works with the County to develop the plan, and assists the county in its correction through TA and on-site visits.
- Typically, the entire program is fully examined with all issues being addressed.

Monitoring and Corrective Action – Child Welfare

- **NCDHHS/DSS is conducting monthly reviews and provides oversight more frequently when corrective action has been required. Monthly reviews includes data reviews as well as targeted case record reviews.**
- **NCDSS looks at child welfare programs by reviewing program components that impact child and family outcomes as well as those mandated by law.**
- **Constituent concern cases may be reviewed and NCDSS may intervene in situations.**

DHHS Intervention in Counties

- **What will initiate a discussion on the need for intervention by NCDHHS**
 - Lack of demonstrated improvement in assessing safety, ongoing contacts, delayed permanence, or other practice issues that have been identified by an RCWC during county consults, the review of records or other available reviews (Fatalities, QA Reviews), and prior plans developed with the county.
 - A recent fatality where policy violations are noted in the record
 - A high- profile case where policy violations played a role in a child being left in an unsafe situation. *These situations typically arise from news stories, customer complaints/constituent concerns, or complaints from legislators

CQI Plan or Corrective Action Plan

- **CQI Plans are appropriate when there have been consistent practice and policy issues that did not have a direct impact on the safety or timely permanence of a child**
- **Corrective Action Plans are appropriate when there have been consistent and sometimes egregious violations of policy and practice that has left children in unsafe situations, at significant risk of future harm, or caused significant delays in timely permanence.**

The County CAP

- **NCDSS will work in partnership with the County Director and county point person to decide on the best methods for needed technical assistance.**
- **NCDSS will be on site at least monthly to review the plan, document progress, and provide any identified technical assistance.**
- **During the onsite visits, the ITA Specialist and/or the RCWC will conduct targeted reviews based on the needs identified in the corrective action. These reviews will be stored in one master book**

SL 2025-16 changes to §108A-74

Empower DHHS “to inquire into and review any county social work practice, or inquire into and review the legal practice of the county or regional department of social services as it pertains to the delivery of child welfare services for a particular child welfare case or all child welfare cases of the department of social services.”

- If violations of law or rule are found, the Secretary may direct the director of social services to remedy the violation by taking immediate action in a manner prescribed by the Secretary that is consistent with State law and applicable rules (after notice to Director and applicable county governing bodies).**
- Does not preclude takeover if necessary**
- If the county does not take the action as directed by the state, the county will be acting outside of the scope of their agency relationship with the state.**

SL 2025-16 changes to 108A-74: Why Legal?

- Because often enough, serious errors on cases that lead to millions of dollars in litigation payouts or IV-E paybacks occur as a result of poor legal decision-making and/or practice
- Examples:
 - Lack of basic child welfare/7B knowledge
 - Lack of basic knowledge of IV-E and requirements for court orders
 - Lack of understanding of confidentiality laws
 - Workload and/or expectations that impede the attorney's ability to effectively represent the client
 - Understaffing/Unreasonably large caseloads
 - Lack of support (no paralegals or assistants)

Why Legal?

- Examples of poor legal practice:
 - Orders referencing statutes repealed in 2013
 - Orders ceasing efforts at reunification at a continued nonsecure custody hearing
 - Orders completely ignoring ICWA
 - Orders not drafted in over a year or at all
 - Not actually following the law (CVA's for example)
 - Petitions with poorly alleged facts and lacking in any legal basis for abuse/neglect/dependency
 - This is largely due to social workers drafting petitions
 - See changes in SL 2025-16 requiring attorney review
 - Counties refusing to share information with DHHS reasoning that CPS info is confidential even to the state (also addressed in SL 2025-16)

SL 2025-16

- **Conflicts of Interest**
 - DHHS authority to order a county to take a COI case
- **DHHS review of decision not to file petition**
 - Previously only the prosecutor's authority, now DHHS as well
- **Express authority detailed in 108A-74**
 - Review case records
 - Consequences of noncompliance
- **Training & practice standards for attorneys**
 - DHHS to work with directors and staff attorneys to create



We are all in this together!

IV-E FUNDAMENTALS

Money Matters!

The Significance of IV-E Eligibility

- ▶ **Uncapped funding source applies when all federal eligibility requirements are met**
- ▶ **Counties usually pay only about 18% of maintenance costs for IV-E eligible children in foster care**
- ▶ **Reimburses administrative costs, including social worker and attorney salaries**
- ▶ **Federal government audits the state every three years to ensure compliance**

The IV-E Difference for Counties

Over the Course of a Year

	Placement		
Child's Age	Agency FFH	Private FFH	Residential
Birth to 5	\$1825	\$4699	\$16,444
6-12	\$2233	\$5182	\$17,051
13-18	\$2436	\$5448	\$17,355

The amount county DSS loses when necessary findings are not included in a court order for a child that would otherwise qualify for IV-E reimbursement.

The Role of Court Orders

- **Timely and meaningful judicial oversight** is basic tenet of IV-E eligibility throughout the life of the case
 - REMOVAL
 - PERMANENCY PLANNING



Timeframe for Eligibility	Required Court Findings
At the time of removal	Remaining in the home was contrary to the child's welfare <u>or</u> removal was in the child's best interest
Within 60 days of removal	Agency made reasonable efforts to prevent removal <u>or</u> the agency was precluded from making these efforts (one or the other - <u>not both</u>)
Within 12 months (and every 12 months thereafter)	Agency made reasonable efforts to finalize the permanent plan(s)

Requirements for Orders (Judicial Determination)

- Valid, enforceable order in NC
- Explicit, made on a case-by-case basis
- No distinction between findings and conclusions
- No “nunc pro tunc” orders, affidavits, or bench notes permitted
 - Discrepancies will be resolved by review of the transcript

From the Final Order:

- “We placed the ban on nunc pro tunc orders because we discovered that they were being used months, sometimes years, later to meet reasonable efforts and contrary to the welfare requirements that had not been met at the time the original hearing took place. We are sensitive to the issue of technical errors. However, it is permissible for States to use transcripts of court proceedings to verify that judicial determinations were made in the absence of the necessary orders. We have, therefore, made no changes to the regulation to modify the ban on nunc pro tunc orders.”
– 65 FR at 4056 (2000)

Placement Responsibility (Placement and Care)

1. Court should make a finding in every order that DSS has **placement responsibility** of the juvenile
 - “Placement and care” is sufficient
 - “Custody” not required by IV-E, but usually includes placement responsibility
2. If Court orders a specific placement rather than giving DSS placement authority, Court must find that it gave consideration to the DSS recommendation regarding placement

Initial Reasonable Efforts Language

A. Within 60 days of removal, Court must identify:

- What efforts DSS made to **prevent removal** AND
- Whether efforts were **reasonable** to prevent removal
- Usually at Review of NSC using form **AOC-J-151**

B. If DSS was precluded from making efforts to prevent removal, Court may find this reasonable

If Court finds *A and B*, **case specific information** should explain how that is possible.

- Finding both creates **inherent conflict** and **jeopardizes IV-E eligibility**, if not explained.

Contrary to the Welfare/Best Interest language

- ▶ In **removal order**, Court must find that remaining in the home is contrary to the juvenile's welfare **or** that placement is in juvenile's best interest.
- ▶ **Current (2019) version of AOC-J-150** contains the finding “contrary to the juvenile's welfare to remain in the home,” but the removal order may be one other than a Nonsecure Custody Order.
- ▶ Failure to meet this requirement renders the **entire placement episode** ineligible for IV-E.

Reasonable Efforts to Achieve Permanence

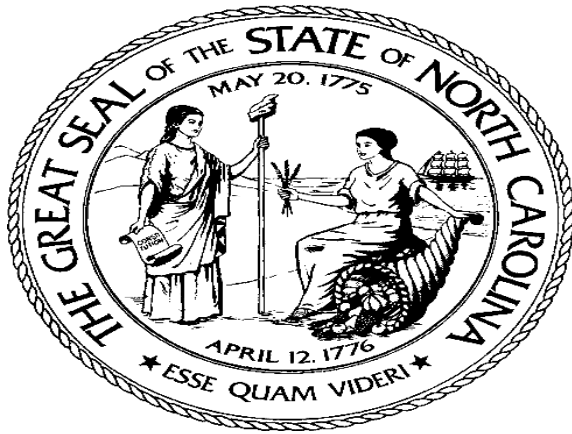
- ▶ Within 12 months of the date child is considered to have come into care, Court must:
 - identify the permanent plan that has been in place
 - find the agency has made efforts to finalize this plan
 - find the efforts were reasonable to finalize this plan.
- ▶ Failure to meet this requirement prevents reimbursement until the first day of the month this requirement is met.

Reasonable Efforts Findings

- Make findings on the record if you can
- Ensure your orders document findings regarding reasonable efforts comprehensively – a short list of things a worker has done will likely not be enough
- Don't rely on what the court report says
- Remember that reasonable isn't every possible effort – it's not exhaustive!

Nonsecure procedures

- Review county afterhours practice
 - Are petitions filed before nonsecure custody is sought?
 - Do you have a delegation order in your county?
 - Are magistrates easily available 24/7?
- Review nonsecure orders and associated paperwork to ensure signatures are correct
- Invalid removal orders lead to a juvenile being ineligible for IV-E for the life of the case



QUESTIONS?