

The Federal-State Connection and the Court's Role in Child Welfare



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Take Aways

- Understand Federal – State Relationship with child welfare laws
 - Application
- Understand Courts Role in Interpreting, NOT Creating Laws
 - Looking to the Laws as a Whole
 - Applying Precedent
 - Remembering the Constitution
 - Impact on Behavior, including Legislative Response

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Federal-State Framework: the Who

	Federal	State
Legislative	Congress	General Assembly
Executive	U.S. DHHS	N.C. DHHS; Social Services Comm., Div. of Social Services
Judicial	Federal District Courts • (3: east, middle, west) Circuit Courts of Appeal • 4 th Cir. = NC, SC, VA, MD, WV U.S. Supreme Court	District Courts, Superior Courts, Court of Appeals N.C. Supreme Court (Office of Administrative Hearings/DSS Office of Hearings and Appeals)

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Framework: the What

	Federal	State
Legislative	Social Security Act (IV-B, IV-E) CAPTA ICWA	G.S. Ch. 108A G.S. Ch. 7B G.S. Ch. 48 G.S. Ch. 131D
Executive	C.F.R. State plan approval & audits Allocation of funds	N.C.A.C. 10A; DSS Policy manuals; State plans - supervise Funding formula
Judicial	Court opinions	Court Opinions



Federal Government

- State may refuse federal funding
- Must comply with federal rules if it accepts federal funding
- Federal mandates are passed down to counties

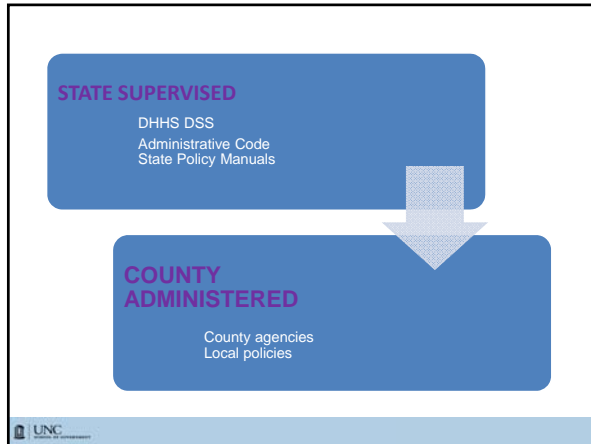


State Government

- **General Assembly**
 - Determines *nature & extent* of State's duty
 - Accepts federal funding
 - Creates State Agencies (DHHS)
 - Creates and amends state's laws
 - G.S. Chapter 7B
 - G.S. Chapter 48
 - G.S. Chapter 108A



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Federal – State Connection

Federal: Reporting
42 USC §5106a(b)(2)(B)(i)

- Has state law in effect and operating a statewide program that includes provisions/procedures for an individual to report known and suspected instances of child abuse and neglect

State: Reporting

- G.S. 7B-301 (box 1)
 - Any person or institution
 - Cause to suspect
 - Abused, neglected, or dependent
 - Exception: limited privilege

Federal – State Connection

Federal: Child Representative
42 USC §5106a(b)(2)(B)(xiii)

- In every case involving victims of abuse or neglect which results in a judicial proceeding, a GAL who has received training.... and who may be an attorney or court appointed special advocate

State: Child Representative

- 7B-601 (box 3a)
- Abuse, Neglect = shall
- Dependency = may
- Qualifications/Who?
 - Volunteer
 - Attorney advocate
 - Program staff =Team

Federal – State Connection

<p>Federal: No Reasonable Efforts If 42 U.S.C. §671(a)(15)(D)</p> <ul style="list-style-type: none"> - Subjected child to aggravated circumstances (as defined in state law, may include abandonment, torture, chronic abuse, sexual abuse) - TPR to sibling - Committed murder/vol manslaughter of another child of parent, felony assault (serious bodily injury) of child or another child of parent <p>42 USC §5106a(b)(2)(B)(xvi)(V) & (VI)</p> <ul style="list-style-type: none"> - Sexual abuse of child or another child of parent - Require to register on sex offender registry 	<p>State: No Reasonable Efforts If</p> <ul style="list-style-type: none"> • G.S. 7B-901(c); - 906.2(b) <ul style="list-style-type: none"> - Box 5b - Box 7a
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Timelines

<p>Federal</p> <ul style="list-style-type: none"> • 42 USC 675(5)(B) <ul style="list-style-type: none"> - Status of each child reviewed periodically by court no less frequently than once every 6 months • 42 USC 675(5)(C) <ul style="list-style-type: none"> - No later than 12 months after entered foster care, permanency hearing • 42 USC 671(15)(E)(i) <ul style="list-style-type: none"> - Permanency hearing w/in 30 days of court det. No reasonable efforts 	<p>State</p> <ul style="list-style-type: none"> • 7B-506 (box 3b) • 7B-801 (c) (box 4) • 7B-901(d) (box 5b) • 7B-906.1(a) (box 6)
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CF SR, Dec. 2015

- Conformity with federal requirements
- Identify State's
 - Strengths
 - Areas needing improvement
- 7 child & family performance outcomes
- 7 systemic factors
- **None in substantial conformity**
 - Strengths identified: timely periodic reviews within federal timelines

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The Role of Courts

- Resolve Disputes
- Ensure Compliance with Laws
- Interpret Laws

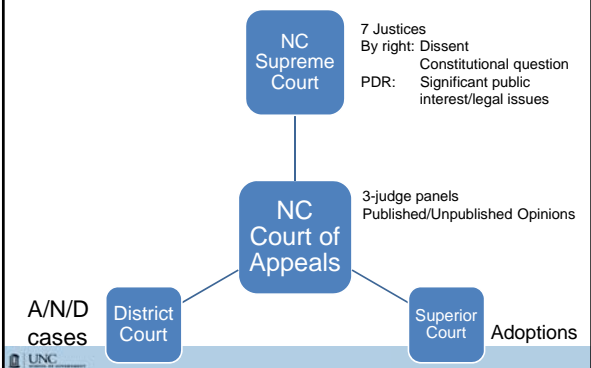


Federal Courts

- Interpret Constitution
- Interpret & enforce federal laws & regs
- Decide cases involving more than one state



NC Court System



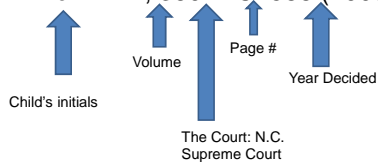
Case Law

- Federal or State Court
- Precedent
 - written opinion
 - directly affects the interests of the parties, but may have larger impact requiring behavior to change or law to change



What does the citation mean?

- *In re* T.R.P., 360 N.C. 588 (2006)



The Director's Role

- Find the Director
 - Read the Whole



In re T.R.P.

- One continuous case that starts with petition
- Neglect petition
 - Allegations:
 - left with aunt for 4 months
 - Mom and bf manufacturing meth in the home
 - Notarized but not signed or verified by director or auth rep.

➡ Adjudicated

- Mom appeals disposition (custody to father)
- No Subject matter jurisdiction



Effect

- Start Over
- Behavior
 - Need signature at outset
 - More appeals by respondents
- Whose signature?
 - In re D.D.F., 187 N.C. App. 388 (2007)
 - Social worker signature, auth rep even though not say so
 - In re S.E.P., 184 N.C. App. 481 (2007)
 - “Don C. Wall by Pam Frazier” X Director



... nor shall any state deprive any person of life, liberty, or property, without due process of law...

NC Const. Art. I, Sec. 19



What Does it Mean for Parents

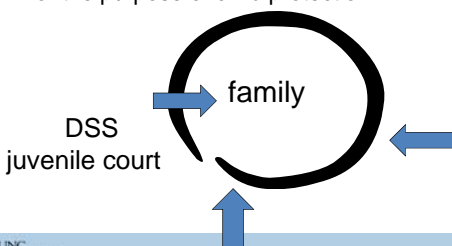
- Care
- Custody
- Control
- Companionship

Troxel v. Granville, 530 U.S. 57, 65-66 (2000) "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."



State Action Affecting Constitutional Rights

When and how may the state intervene in families for the purpose of child protection?



The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with their constitutionally protected interest.

Lehr. V. Robertson, 463 U.S. 248 (1983)



Court's Role

- Interpret law
- Rely on Precedent
- Precedent
 - Constitution: life, liberty, and property
 - Parent's Liberty Interest
 - Care, custody, and control
- Look to the Whole



In re Stumbo, 357 N.C. 279 (2003)

- Anonymous phone call
- Unsupervised naked 2 year old in driveway
- Parent refused to allow DSS to interview their 4 children

- What can director do?
- Interference Petition, 7B-303 (box 2b)



Interference

- Looks at the Whole
 - “neglect” was not reported

- Concurrence
 - Court interpretation of unlawful – has meaning
 - looks to constitutional rights
 - IV amendment “search and seizure”

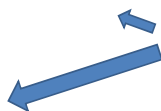


In re R.R.N., 368 N.C. 167 (2015)

- Interpret Law
 - Caretaker, 7B-101(3)
 - “Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting.”
 - “means ... an adult relative entrusted with the juvenile’s care.”



Adult Relative



In re R.R.N.

- Look to the Whole
 - Definition
 - Purpose
 - Constitutional Rights



“Entrusted with the Juvenile’s Care”

- Totality of Circumstances Test of Significant Degree of Parent-Type Responsibility
 - Duration
 - Frequency
 - Location
 - Decision-Making Authority



Procedural Due Process

- Basic Fairness
 - Notice (timely and adequate)
 - Opportunity to be heard
 - Impartial decision-maker
 - Supported by evidence
 - Proper standard of evidence



What is it?

10A NCAC 70A.0102: employability or fitness to care for or adopt children



Due Process

- *In re W.B.M.*, 202 N.C. App. 606 (2010)
 - Art. 1, Section 19
 - Liberty interest
 - Pre-deprivation hearing

Father
Alleged abuse
Sexualized
behaviors of
son



In re W.B.M.

- Constitutional Challenge to RIL
 - Director places on list, then sends letter
 - Recipient seeks expungement
 - Director review
 - D.A. review
 - Court Review
- Holding
 - Deprives liberty interest
- Legislative Response



Legislative Response Overturning Decision *In re P.D.R.*, 224 N.C. App. 460 (2012)

- GAL for Respondent Parent in TPR
- Interpret Law
 - G.S. 7B-1101.1 and G.S. 1A-1, Rule 17
 - Incompetence vs. diminished capacity
 - Substitution vs. assistance
- Holding: Specify
- Order: Vacate TPR and remand
- Impact: G.A. Response
 - Courts don't make law; legislature does



The End

