

## Hot Topics from the Child Welfare Field

(aka, "Don't get sued!")

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### What we'll review:

- ▶ Update on the TPSA Policy
- ▶ Update on litigation in other states
- ▶ Other areas of concern

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### The TPSA Policy

- ▶ See NC DHHS *Family Services Manual*, Ch. VIII §1408
- ▶ If it is not followed, are there consequences? Yes.
- ▶ TPSA policy adherence is a regular part of Program Monitoring (CFSR)
- ▶ Funding depends on meeting certain standards.
- ▶ Policy is designed to ensure counties meet these standards, so as not to jeopardize funding or invite lawsuits.

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## The TPSA Policy

### ► How does monitoring work and when is monitoring of TPSA used?

#### ► Questions asked:

- *Sufficient justification*
- *Voluntary*
- *Time-Limited*

*Issues occur when there is a clear plan and the family doesn't follow it, or when the plan is not clear.*

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## The TPSA Policy

### ► How does monitoring work and when is monitoring of TPSA used?

#### ► Questions asked (cont'd):

- *Did the plan include services to support the TSP, if needed?*
- *Other questions including proper signatures, safety assessments, background checks, and documentation related questions.*

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## The TPSA Policy

### ► When a county fails to comply with policy, there are consequences. Those can include:

- *A Program Development Plan, or PDP*
- *You all know what the other consequence is:*
  - **LAWSUIT**

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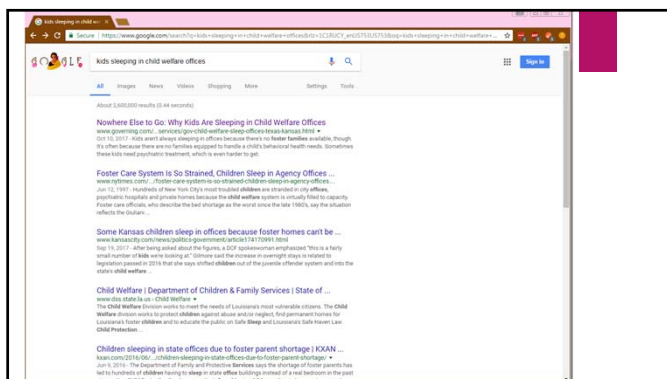
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## The TPSA Policy

- ▶ What many counties report to the Division is that their attorneys will not file a petition if the child is “safe” with a TSP. Or that “too much time has passed.”
- ▶ There is no such thing as “too much time” passing if the child cannot go home, regardless of when the behavior that led to the use of a TPSA came about.
- ▶ In re K.J.D., 203 N.C. App. 653, 692 S.E.2d 437 (2010).
  - ▶ New case – In re: B.P., published in January 2018

## Litigation in other states

- ▶ Numerous class actions pending right now, most focus on systemic failures of a given state's child welfare system.
  - ▶ A recurring theme is kids sleeping in Agency offices
  - ▶ Most concern children with mental health issues for whom placement cannot be found.
    - ▶ Alleged violations of the Americans with Disabilities Act, Rehabilitation Act, and Fourteenth Amendment.






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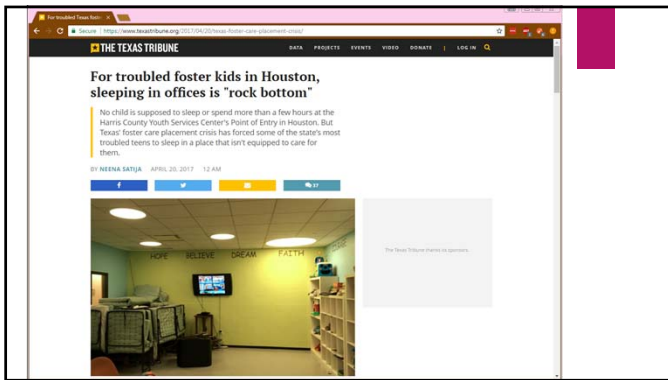
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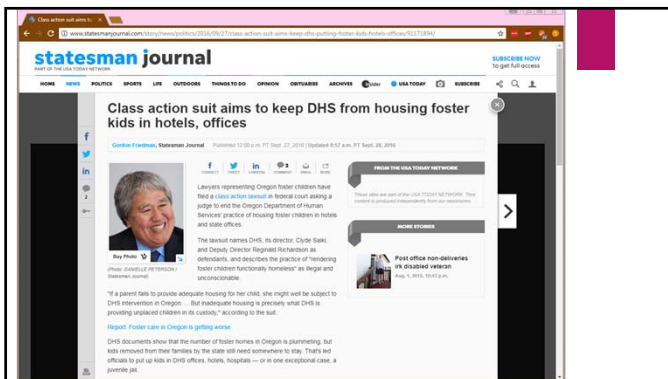
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## Litigation in other states

- ▶ Some cases that are active and/or in monitoring
  - ▶ Arizona: *B.K. v McKay*
  - ▶ Texas: *M.D. v Abbott*
  - ▶ South Carolina: *Michelle H. v. McMaster*
  - ▶ Oregon: *A.R. v State of Oregon*

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## Litigation in other states

- ▶ What is going on in North Carolina?
  - ▶ How many of you have had this occur in your counties?
  - ▶ At least one night?
  - ▶ More than one night? If so, why?
- ▶ So what can we do if faced with this situation?
  - ▶ Get the court involved ASAP
  - ▶ Contact your CPR (Children's Program Representative)
  - ▶ Any other suggestions?

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## Other areas of concern

- ▶ Drug screening children in DSS Custody
  - ▶ 4th Amendment protections extend to children in DSS custody
    - ▶ When can you drug screen?
      - ▶ When it's medically necessary/exigent circumstances - 7B-505.1(a)(3)
      - ▶ Parents have given permission
      - ▶ Court order (Note AOC-J-150 and 151 have checkboxes for that.)

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## Other areas of concern

### ▶ IV-E Audit July 2017

- ▶ We passed the audit with only one error.
- ▶ The Feds were generally very satisfied with our orders.
- ▶ Four errors outside the Period Under Review (PUR)
- ▶ These errors occurred when an agency took custody of a juvenile near the end of a month.
- ▶ The agency used the AOC-J-150 Form.

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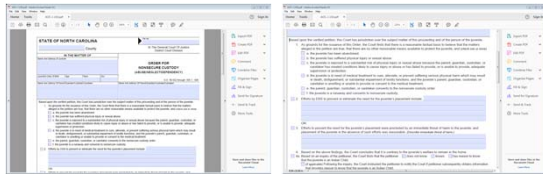
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## Other areas of concern




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## Other areas of concern

### ▶ IV-E Audit July 2017

- ▶ The issue is that the form neglects to include language that said efforts were "reasonable"
- ▶ If the county obtains this order at the end of a month, and does not have a first hearing on the need for continued nonsecure custody until the following month but seeks reimbursement for the first month, this will be considered an error.
- ▶ Note that the form order for initial nonsecure custody does NOT have reasonable efforts language already contained therein.

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## Other areas of concern

### ▶ IV-E Audit July 2017

- ▶ A request has been made to the AOC to update the form.
- ▶ In the meantime, with AOC-J-150, you may want to do something like this:

- ☒ 2. Efforts by DSS to prevent or eliminate the need for the juvenile's placement include:
- 1) The Department explored numerous relative placements, yet none were willing or able to take placement of the juvenile;
  - 2) The Department attempted to engage respondent mother in mental health treatment but she did not follow through;
  - 3) The Department has made efforts to locate respondent father through relative contacts and on-line resources, to no avail, and such efforts were found to be reasonable.

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## Conclusion

- ▶ Follow TPSA Policy
- ▶ Don't drug screen kids without permission/reason
- ▶ Children should not be sleeping in agency offices
- ▶ Make sure your efforts are documented as "reasonable" at removal

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