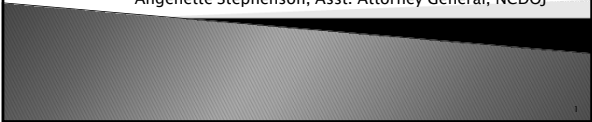


**North Carolina's Child Welfare System**

The County, State, and Federal Role

Jane Thompson, Asst. General Counsel, NC DHHS  
Angenette Stephenson, Asst. Attorney General, NCDOJ



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**Two-tiered System**

- ▶ State supervised, county administered
- ▶ Only one of 12 states without unified child welfare system
- ▶ DHHS Division of Social Services supervises and promulgates rules and policy
  
- ▶ Note: Federal HHS holds NC to same compliance standards as unified states



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**State Liability for County Action**

- ▶ Appellate courts have held county DSS are agents of State DSS in tort claims for negligence before the Industrial Commission
  
- ▶ Courts found substantial authority and control based on funding, statutes, and policy
  
- ▶ In child protective services investigations, foster care placements, and adoptive placements



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## State Oversight

- ▶ Reviews of county DSS cases for federal programmatic and fiscal (IV-E) compliance
- ▶ Training for county DSS staff
- ▶ Consultation and technical assistance from Raleigh Policy Team and home based consultants
- ▶ G.S. 108-74 – State DSS intervention

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## Child Protective Services

- ▶ Intake process
- ▶ Multiple Response System
  - ◆ Two assessment tracks, Family and Investigative
  - ◆ All abuse and some neglect reports must use investigative assessment track
  - ◆ Different case decisions
  - ◆ Only investigative identifies the perpetrator and can lead to a RIL decision

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## Standardized Forms

- ▶ Throughout child welfare case – from intake through permanence
- ▶ Examples:
  - Safety Assessment
  - Risk Assessment
  - Strengths and Needs
  - Case Decision summary
  - In-Home Service Agreement
  - Out of Home Service Agreement

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## Foster Care Placement

- ▶ State DSS licenses all foster homes – family and therapeutic
  - Therapeutic = Level 2 care and must be approved by local mental health MCO
- ▶ State DSS licenses all private child placing agencies
- ▶ All foster parents must be supervised by either county DSS or child placing agency

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## Interstate Compact on the Placement of Children (ICPC)

- ▶ State Division houses NC ICPC office
- ▶ Applies to all placements for foster care or adoption
- ▶ Family exception for children placed privately by parent with certain family members in another state
- ▶ Placements by juvenile court with non-offending parent in another state can be made without ICPC home study/approval and monitoring in certain circumstances

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## Adoption Review and Indexing

- ▶ State Division includes Adoption Indexing and Review Team
- ▶ All finalized adoptions go to Division to be permanently indexed and stored
- ▶ Once indexed, Division provides information to applicable Vital Records office for new birth certificate

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## IV-E Fundamentals

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## 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

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## The IV-E Difference for Counties

*Over the course of a year*

Child's Age	Placement Type		
	Agency FFH	Private FFH	Residential
Birth-5	\$1,825	\$4,699	\$16,444
6-12	\$2,233	\$5,182	\$17,051
13-18	\$2,436	\$5,448	\$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.

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## 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

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

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## 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

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Are findings made on the record in your district?

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**From the Final Rule**

"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)

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**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 **bona fide consideration** to the DSS recommendation regarding placement

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### 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 (2013) 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.

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### 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 in 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.

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### 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.

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## Six Permanent Plans

1. Reunification
2. Adoption
3. Guardianship
4. Custody
5. Another Planned Permanent Living Arrangement (APPLA)
6. Reinstatement of Parental Rights

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## Reasonable Efforts to Finalize the Permanent Plan

- ▶ The first order addressing reasonable efforts to finalize a permanent plan often addresses reunification
- ▶ If permanent plan changes, Court should require DSS to make efforts to achieve the **new** plan
- ▶ **Concurrent plans** may be listed as a primary plan and a secondary plan
  - Ideally, DSS makes efforts toward both, but at least one

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## Special Circumstances

1. Constructive Removal
2. Voluntary Placement Agreements (VPA)
3. Trial Home Visit
4. Crossover Youth (Delinquent)

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Special Circumstances

## 1. Constructive Removal

- Removal home must be that of a specified relative (frequently, a parent)
- “Contrary to the welfare” or “best interest” language will be about the removal home, not the temporary home
- Child must have lived with the specified relative within the six months just prior to removal
- Child may remain in current living arrangement

**Applies when child, at time of removal, is not living with person from whom they are removed**

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## 2. Voluntary Placement Agreements

- Another route to IV-E eligibility
- Court must review within 180 days and find remaining in care is in child’s best interest
  - 7B-910 requires review within 90 days
- 180 day clock starts at removal or, if constructive removal, when the VPA is executed
- In NC, a VPA may only be executed by a parent or guardian
- Placement provider must be licensed

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## 3. Trial Home Visit

- If child comes back into care while on a qualifying trial home visit, no need to redetermine IV-E eligibility
- If a reunified child comes back into care outside of a trial home visit, the removal will be treated as a new removal and eligibility must be determined again
- Unless otherwise specified by the Court, six months is the longest a trial home visit may last

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## 4. Crossover Youth (Delinquent)

*As with all judicial determinations*

Timeframe for Eligibility	Required Court Findings
At the time of removal	Remaining in home was contrary to the child's welfare <b>or</b> removal was in child's best interest
Within 60 days of removal	Agency made reasonable efforts to prevent the removal "Precluded" language is appropriate if DSS became aware of the juvenile after the juvenile was removed

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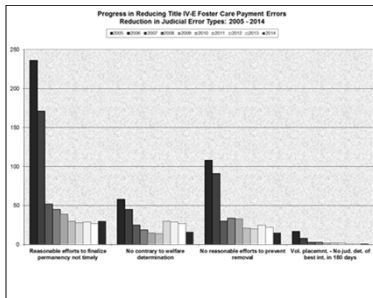
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## Judicial Errors 2014 - 15 states (Children's Bureau)




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## What is the Role of Judicial Oversight in IV-E Eligibility?

- ▶ Critical
- ▶ Often overlooked
- ▶ More than just "magic language."
- ▶ More than just "for funding purposes."

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