

# *Title IV-E: It's Not Just About Money or Why It Matters to Children in Foster Care*

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# Judges and Title IV-E

Judges are enforcing IV-E in every CHIPS case involving a child in foster care:

- Determine:
  - a child cannot be safely at home and find placement in the child's best interests
  - the agency made “reasonable efforts” to avoid placement
- Attend to timely hearings and the child's need for permanency
- Oversee the agency's reasonable efforts for reunification or to achieve other legal permanency

# Overview: What is Title IV-E?

- Title IV-E is a federal program that subsidizes the cost of foster care for eligible youth in eligible facilities
- It does so by establishing eligibility requirements that states provide certain protections for children in foster care

# Overview: What is this important to judges?

- Judges have a key role in making findings that protect the rights of children and families:
  - Right findings at the right time enable county agencies on particular cases to receive federal reimbursement for a portion of the cost of providing foster care
  - Cost of foster care in most counties is paid by property tax dollars
- Federal audit of the state's compliance with Title IV-E requirements – 2016
  - Placements of children in foster care from April 1, 2015 to September 30, 2015 – NOW!

# Overview of Title IV-E: How long has it existed?

- Passed in 1980 in response to “foster care drift”
- “Foster care drift” is term used to describe the predictable set of poor outcomes experienced by children who spend too much time in foster care:
  - Multiple placements
  - permanency plans that are delayed, forgotten, or never made
  - resulting in children with broken connections, attachment disorders, poor school results, mental health issues, and who cross-over into crime

# Overview of Title IV-E: What are its objectives?

- Reduce reliance on foster care to keep children safe
- Require use of preventive planning and reunification services
- Require permanency planning

# Overview of Title IV-E: Has it been changed?

Significant, but not exclusive amendments:

- 1997 – ASFA
- 2008 -- Fostering Connections
  - expanded availability of Title IV-E reimbursement to age 21 through a state “opt in”
- 2014 -- Preventing Sex Trafficking and Strengthening Families

# Overview of Title IV-E: What does it reimburse?

- Maintenance -- cost of foster care
- Administration -- agency-related tasks to administer foster care and case management
- Training -- agency and other foster care system stakeholder training related to implementing the program or protections, *e.g.*, in MN GAL Program

# Basic Eligibility

- Child's family income – AFDC-relatedness (using 1996 income standard)
  - Protections apply to all children, not just poor children
- Judicial determinations
  - Best interests/contrary to the welfare finding upon removal
  - Reasonable efforts, periodically (at the right times) throughout time child is in placement
- Agency must have legal responsibility for the care and control of the child
- Facility must be eligible

# Facility eligibility

- Foster home or facility must be fully licensed
- Facility must have capacity of 25 or less and not be primarily for delinquent children
- Cannot be locked

# IV-E protections for children and families

- Privacy safeguards – *Minn. Stat. § 13.46*
- Standards for facilitates – MN -- must be licensed and have Adam Walsh background studies – *Minn. Stat. Chapters 245A and 245C*
- Health and safety of the child must be the paramount consideration -- *Minn. Stat. Chapter 260C*

# IV-E protections for children and families:

- Judicial approval of need for placement – *Minn. Stat. §§ 260C.151, subd. 6, and 260C.178 (f)*
  - In voluntary placements, *Minn. Stat. § 260C.141, subd. 2* and *Chapter 260D*
- Reasonable efforts by agency, approved by court - *Minn. Stat. § 260.012* and *Chapter 260C*
- Individualized case planning – *Minn. Stat. § 260C.212, subd. 1*
- Periodic reviews (court hearings) *Minn. Stat. §§ 260C.202 and 260C.203*

# Judicial approval of need for placement

- Answers the question, “Does this child have to be in placement?” If yes, then find:
  - “Placement in in the best interests of the child.” or
  - “Continued custody of the child by the parent is contrary to the welfare of the child.”

# Judicial approval of need for placement

## Timing:

- in the very first order removing the child; or
- in the case of voluntary placement, within 180 days
  - *Minn. Stat. § 260C.141, subd. 2* voluntary placement reviewed by CHIPS filed by 90 days
  - *Chapter 260D*, children in voluntary placement to access treatment reviewed by court report at day 165

# Reasonable efforts

1. to prevent placement  
(or, in a small number of cases, placement prevention efforts are not required, then finding is “reasonable efforts to prevent placement are not required”)
2. to finalize the permanent plan for the child

# Statutory definition: reasonable efforts to prevent placement

- (1) the agency has made reasonable efforts to prevent the placement of the child in foster care by working with the family to develop and implement a safety plan; or
- (2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.

*Minn. Stat. § 260.012 (e)*

# Reasonable efforts to prevent placement

- Reasonable efforts were made to prevent removal (retrospective look back at what led to child's placement and what the agency could have done to prevent it)
  - This is the “reasonable efforts” requirement for most cases at removal – finding appropriate in two different situations:
    1. Efforts were actually made; or
    2. Under the particular circumstances, no efforts could be provided that would permit the child to be safely at home
- This type of RE is not required in CHIPS by-pass cases

## Title IV-E for Judges

### Best Interests of the Child and Reasonable Efforts Findings

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#### Judge's Inquiry<sup>1</sup> on Reasonable Efforts to Prevent Placement

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Basic Question: Why can't the child be maintained at home safely today?

Specific questions for the agency:

1. What are the circumstances or conditions which caused the child to have to be removed? What was the specific reason that the child could not be adequately protected at home and the specific harm that may have occurred if the child remained in the home?
2. What services were offered to avoid removal?
3. What services were in fact provided to avoid removal?
4. What services, if any, could have avoided the removal?
5. To the extent that there were services that could have prevented the removal, why were they not offered?
6. Have there been any prior referrals or agency involvement?
7. If there have been prior referrals or agency involvement, were the attendant circumstances or conditions sufficient to put the agency on notice of underlying issues that would likely result in a later removal but for the provision of appropriate services?
8. If the answer to the previous question is yes, did the agency provide services at that time that were reasonably calculated to remedy the underlying issues that made a later removal likely? If not, then that failure constitutes a failure to make reasonable efforts to avoid this removal.

# Scenarios -- Reasonable Efforts to Prevent Placement

- Child is taken into custody by law enforcement and neither parent can be found within 72 hour hold
- Parent calls law enforcement for the 4<sup>th</sup> time and demands that violent 12 year old be removed from home
- Baby tests positive for cocaine after mother gives birth in the hospital

# Case types: reasonable efforts to prevent placement are not required

*Minn. Stat. § 260.012 (e)*

- In CHIPS by-pass cases, reasonable efforts to prevent are NOT required. Court should find, “Reasonable efforts to prevent placement were not required.”
- Case types:
  - egregious harm
  - sexual abuse
  - abandoned infant
  - previous involuntary TPR or transfer of custody to relative
  - parent required to register as a predatory offender
  - further reasonable efforts would be futile

# Real Orders: Real IV-E Disallowances

- Best interests/contrary to the welfare finding is missing in the first order
  - Finding must be in the very first order removing the child from the care of the parent;
  - If finding is not in the very first order, Title IV-E reimbursement is never available

# Real Orders: Real IV-E Disallowances

- Reasonable efforts were not possible [or were not required] as an emergency exists or existed.

Correct finding: RE were made (given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home).

# Real Orders: Real IV-E Disallowances

- The order contains a detailed description of what services or efforts have been made by the agency, but without the finding.
- Make the finding:
  - Reasonable efforts were made to prevent the placement
  - Reasonable efforts were made to finalize the permanency plan

# During the course of the case

The next judicial determination:

- “Reasonable efforts are being made to achieve permanency.”

# Statutory definition: reasonable efforts to achieve permanency means

- Reunification (in most cases)
- Assess and provide services to both parents
- Conduct a relative search
- Place siblings together or, when siblings cannot be together, facilitate visitation
- When a child cannot return home, plane for and finalize a safe and legally permanent alternative home

*Minn. Stat. § 260.012 (e)*

# Reasonable efforts to achieve permanency

- Reunification remains the plan for most children until the court orders otherwise:
  - Element of most TPR grounds
  - Must be proved for transfer of permanent legal and physical custody to a relative
  - Not an element of CHIPS by-pass cases

# Reasonable efforts to achieve permanency

- While attempting reunification, the agency must make other reasonable efforts to achieve permanency which means planning for a new legal alternative for the child, in the event a new home is needed:

<b>Assess both parents</b>	<b>Can the alternative permanency plan be the noncustodial parent?</b>
Conduct a relative search	Can it be a relative?
Place siblings together	Siblings must be together if they are adopted or when a relative takes custody
Finalize a legally permanent alternative home	Who will commit to being the child's new family if the child cannot return home?

- This is concurrent permanency planning. See *Minn. Stat. § 260.012 (e)*

# Title IV-E: Which children qualify?

Assuming financial and other eligibility requirements are met:

- All CHIPS children in foster care
- All children in foster care in umbrella counties (Dakota, Olmsted, Stearns)
- All children in foster care under the responsible social services agency or the local corrections agency when the two agencies have entered into a Title IV-E agreement
  - This means some delinquent children can qualify for Title IV-E

# Other Handouts

## Required IV-E Findings: Best Interests and Reasonable Efforts

### Minnesota Statutory Requirements

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Hearing or Event	Timing	<b>Findings Required for Court-ordered Placement, Permanency, and Continued Foster Care (and Title IV-E Reimbursement)</b>
<b>First Orders or Hearings for:</b>		
<ul style="list-style-type: none"> <li>• Involuntary removal of child (law enforcement hold or order for immediate custody)</li> <li>• Voluntary placement under Chapter 260C (not Chapter 260D)</li> <li>• Children over age 18 re-entering Foster Care</li> </ul>		
Ex parte order removing child	<b>Very first</b> court order removing the child	<b>Continuation of the child in the custody of the parent is contrary to the child's welfare (placement is in the best interests of the child);</b> <i>Minn. Stat. § 260C.151, subd. 6</i>
Emergency Protective Care Hearing	<b>Very first</b> court order removing the child; repeated/reviewed at EPC if removal occurred ex parte	<b>Continuation of the child in the custody of the parent is contrary to the child's welfare (placement is in the best interests of the child);</b> <i>Minn. Stat. § 260C.178, subd. 1 (f)</i> <hr/> <p style="text-align: center;"><b>AND</b></p> <p><i>One of the following "reasonable efforts" findings is required under Minn. Stat. § 260C.178, subd. 1 (e):</i></p> <p><b>Reasonable efforts were made to prevent the placement</b> which means either;</p> <p>(1) the agency has made reasonable efforts to prevent the placement of the child in foster care; or</p> <p>(2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.</p> <p><i>Minn. Stat. § 260.012 (d)</i></p> <p style="text-align: center;"><b>OR</b></p> <p><b>Reasonable efforts to prevent the placement were not required.</b></p> <p><i>Note:</i> This finding is appropriate in CHIPS by-pass cases, also called expedited permanency cases, where the court finds the petition states a <i>prima facie</i> case under <i>Minn. Stat. § 260.012<sup>1</sup></i>. When a case is a by-pass case and a permanency petition is filed, an admit/deny hearing must be held within 10 days of the filing of the petition; <i>Minn. Stat. § 260C.507(b)</i></p>

<b>Hearing or Event</b>	<b>Timing</b>	<b>Findings Required for Court-ordered Placement, Permanency, and Continued Foster Care (and Title IV-E Reimbursement)</b>
<b>Review of children in voluntary placement under Chapter 260C</b>	CHIPS petition by 90 days; hearing 20 days after service of petition	<p><b>Placement is in the child's best interests.</b></p> <p>Other, related finding required under state law:</p> <ul style="list-style-type: none"> <li>• Reasonable efforts to reunify the child and the parent or guardian are being made; and</li> </ul> <p><i>Minn. Stat. § 260C.141, subd. 2</i></p>
<b>Re-entry to foster care by children after 18<sup>th</sup> birthday</b>	Motion to re-open court jurisdiction by 30 days; hearing within 60 days	<p><b>Placement is in the best interests of the child.</b></p> <p><i>Minn. Stat. § 260C.229 (c)</i></p>

<sup>1</sup> By-pass case types from *Minn. Stat. § 260.012 (a)*:

- (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;
- (2) the parental rights of the parent to another child have been terminated involuntarily;
- (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);
- (4) the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;
- (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;
- (6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b); or
- (7) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.

Hearing or Event	Timing	Findings Required for Court-ordered Placement, Permanency, and Continued Foster Care (and Title IV-E Reimbursement)
Orders or Hearings for Permanency, including Termination of Parental Rights		
Admit/Deny on TPR or Permanency Petition	Not later than 12 months of court-ordered removal	<b>Petition states a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian.</b> <i>Minn. Stat. § 260C.507 (c)</i>
	For CHIPS bypass cases, if finding was not made at EPC	<b>Reasonable efforts for reunification are not required</b> as provided in <i>Minn. Stat. § 260.012</i> .
Trial on TPR or Hearing on any Permanency Petition	By month 14 for most trials	<b>Reasonable efforts were made to reunify the child and the parent.</b> <i>Minn. Stat. § 260C.301, subd. 8</i> <b>or for ICWA cases:</b> <b>Active efforts were made to prevent the breakup of the Indian family.</b> <i>25 U.S.C. §1912(d)</i> <b>OR</b>
	For CHIPS bypass cases, within 60 days of filing of petition	<b>Reasonable efforts for reunification are not required</b> as provided in <i>Minn. Stat. § 260.012</i> . <i>Minn. Stat. § 260C.301, subd. 8</i>
Additional Findings for Permanent Custody to Agency	By month 12	(1) <b>Approve the agency's compelling reason for the child to continue in foster care;</b> and (2) <b>No other permanency disposition is in the child's best interests including that the responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or relative who would agree to adopt the child or to a transfer of permanent legal and physical custody of the child, but these efforts have not proven successful.</b> <i>Minn. Stat. § 260C.515, subd. 5</i>

<b>Hearing or Event</b>	<b>Timing</b>	<b>Findings Required for Court-ordered Placement, Permanency, and Continued Foster Care (and Title IV-E Reimbursement)</b>
<b>Orders from Periodic Reviews after Child Comes under State Guardianship, is in the Permanent Custody of the Agency, or is in Foster Care after Age 18</b>		
Reviews of children under State Guardianship	Review hearings are required every 90 days	<b>The agency is making reasonable efforts to finalize the adoption of the child.</b> <i>Minn. Stat. § 260C.607, subd. 4 (a) (1)</i>
Reviews of Permanent Custody	At least annually	<b>The agency is making reasonable efforts to finalize the permanent plan for the child</b> which means: (1) the agency has made reasonable efforts to identify a more legally permanent home for the child than is provided by an order for permanent custody to the agency for placement in foster care; and (2) the agency's engagement of the child in planning for independent living is reasonable and appropriate. <i>Minn. Stat. §§ 260C.229, 260C.203, and 260C.521, subd. 1,</i>
Reviews of children in foster care after the child's 18 <sup>th</sup> birthday	At least annually; foster care may be supervised independent living once the child is 18	The agency is making reasonable efforts to finalize the permanency plan by supporting the youth's continued success in placement, planning for independent living as demonstrated by the youth's progress in achieving independent living goals, and preparing the child for independence. <i>Minn. Stat. § 260C.451, subd. 6 Children's Bureau Program Instruction, PI-10-11</i> See also, definition of child at <i>Minn. Stat. § 260C.007, subd. 4</i>

# Delinquency

## **Applying IV-E Requirements in Delinquency<sup>1</sup> Cases**

Ann Ahlstrom, Updated: Spring 2015

<b>County Requirements to Claim Title IV-E for delinquency placements</b>			
<b>IV-E Requirement</b>	<b>When</b>	<b>Timing</b>	<b>Court Action</b>
County is an umbrella county: Dakota, Olmsted, and Stearns	Governance of county puts social services and juvenile corrections departments under the same administration		
IV-E agreement in effect between local social services agency and corrections/probation agency	Agreement must be in place in order for social services to claim IV-E reimbursement when legal responsibility for placement is given to corrections agency		
Judicial determination of Contrary to the Welfare or Best Interests	<b>In very first order</b> removing child from home even if child is placed in ineligible facility (detention or facility with capacity of 25 or more and primarily for placement of delinquent children)	Must be in very first order removing the child from home or placement does not meet basic IV-E eligibility requirements and, therefore, is not reimbursable	Yes
Judicial determination of reasonable efforts to prevent placement	Within 60 calendar days of order removing child from home even if child is placed in ineligible facility	Must be made within 60 days from date of the court order removing the child or placement does not meet basic IV-E eligibility requirements and, therefore, not reimbursable	Yes
Out-of-Home Placement Plan	When child is in an eligible facility <sup>2</sup>	Within 60 days of child entering eligible facility	None
Periodic review of necessity of placement, appropriateness of the particular placement, and adequacy of services to child and family	When child is in an eligible facility	Administrative review – 6 months after child enters eligible facility and every 6 months thereafter unless court hearing is held that reviews required issues	Can be court hearing or administrative review

<b>IV-E Requirement</b>	<b>When</b>	<b>Timing</b>	<b>Court Action</b>
Permanency Hearing: Permanency Petition is NOT required; hearing can be part of regular review under <i>Minn. Stat. § 260B.198, subd 9</i>	When child is in an eligible facility; only time in an eligible facility is counted toward permanency hearing requirement	Within 12 months after the child enters an eligible facility and every 12 months thereafter as long as child remains in an eligible facility	Yes
Judicial determination regarding reasonable efforts to finalize the permanency plan for the child (always reunification unless concurrent CHIPS is filed)	When child is in an eligible facility; The permanency plan for delinquency is <i>always</i> reunification. If the child needs a different plan, concurrent CHIPS jurisdiction is appropriate.	Within 12 months after the child enters an eligible facility and every 12 months thereafter as long as child remains in an eligible facility	Yes
Determination of “compelling reason” to continue in foster care past 12 months	When child is in an eligible facility	Within 12 months after the child enters and continues in an eligible facility	No <sup>3</sup> ; agency must document

<sup>1</sup> A county that can claim Title IV-E for any delinquent child must provide the Title IV-E protections to all delinquent children in foster care.

<sup>2</sup> “Eligible facility” means a family foster or group home licensed by DHS or DOC and those facilities listed in an Instructional Bulletin published quarterly by DHS and located on the DHS web site.

<sup>3</sup> Note the difference from CHIPS requirement where court must approve agency determination of “compelling reasons.” See *Minn. Stat. § 260C.007 subd. 8*.

# What you learned:

Judges hold the key to placement. When it is necessary find:

- Best interests/contrary to the welfare finding are the same finding
  - Should always be made in the very first order you issue
- There are two basic types of reasonable efforts:
  - Reasonable efforts to prevent placement
  - Reasonable efforts to finalize the permanent plan for the child

# What you learned:

- Reasonable efforts to finalize the permanent plan means:
  - Reunification (for most cases) efforts with both parents
  - Finding and placing with relatives, if safe and appropriate
  - Keeping siblings together
  - Finalizing a legally permanent alternative home for a child who cannot timely and safely return home.

# What you learned:

Title IV-E is about protections for children and families

Federal reimbursement for the cost of foster care is important for county taxpayers and maximizing reimbursement expands resources available for services for children