



Family First Prevention Services Act

Implementation Questions for Legal Community Engagement

The Family First Prevention Services Act became law in February 2018. Family First is a landmark child welfare law with the potential to establish significant changes in how the child welfare system is funded and operates across the country. As states begin the process of implementing the many provisions of Family First, we have pulled together questions for agencies to discuss and address with partners in the legal community.

Some of these questions may have clear answers under state law, while others will be more appropriate to address as part of an implementation team effort, or to prepare for as part of a critical review after implementation begins.

This list of questions is intended as a tool to help build those discussions and lay the groundwork for partnering with the legal community to implement Family First, including by identifying and planning to address potential unintended consequences of the law.

To ensure diverse viewpoints are shared and incorporated in the planning process, we recommend state implementation teams include representation from multiple members of the legal community, such as:

- Dependency and family court judges, magistrates and hearing officers
- Tribal court judges
- Chief Justices and state court administrators
- Attorneys for state government (e.g., attorney general offices)
- Trial attorneys who represent agencies
- Trial attorneys who represent children and youth
- Trial attorneys who represent parents
- Attorneys/advocates for kin
- Court administrators
- Court Improvement Program staff
- Tribal attorneys
- CASA or volunteer guardian ad litem director or staff
- Legislators, county commissioners or other local officials
- Attorneys whose work intersects with child welfare (e.g., education, kinship, domestic violence, immigration, housing, juvenile justice or other specialty)

For more information about the ABA's work on legal community engagement for Family First Implementation, and follow up TA, please contact Cristina Cooper, cristina.cooper@americanbar.org, Anne Marie Lancour, Annemarie.lancour@americanbar.org, or Heidi Redlich Epstein, Heidi.Epstein@americanbar.org.



I. PREVENTION SERVICES QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

○ **Candidacy:**

- What state law definitions of “candidate for foster care” will apply?
- What definitions will apply for other children eligible for prevention services based on adoption or guardianship at risk of disruption/dissolution?
- What criteria will the agency use to determine if a family would benefit from prevention services?

○ **Review:**

- Will agency counsel review individual determinations of prevention services eligibility?
- Can all caseworkers make determinations about prevention services or will there be distinctions between “prevention caseworkers” and others?
- If these are distinct, does the same worker remain involved after a child enters foster care? Do they have different reporting requirements, case obligations and duties?
- Who decides if prevention services have been completed or more services are needed?
- If an eligible child moves in with kin during prevention services:
 - Who reviews that decision at time of placement?
 - Who decides next step – e.g. the child can reunify safely? Guardianship? Foster placement with kin or other?
 - If the situation requires a legal proceeding outside child welfare (e.g., guardianship or adoption) will counsel be appointed for the parent/child/kin?

○ **Voluntariness:**

- How can the agency ensure prevention services are accepted and provided voluntarily?
 - Is this different in situations where the child remains at home and situations where the child moves in with kin during prevention services?
- Will children’s, parents’ or agency attorneys be appointed during prevention services?
 - What are the advantages to that option?

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- What court rules regarding appointment, billing structures, or other logistical criteria would need to change to make this possible?
 - Does the new IV-E funding for child counsel and parent counsel affect that decision?
- **Impact on judicial decision-making:**
- At a hearing, can judges question whether prevention services are an alternative to removal?
 - Is there a risk that the provision of services could weigh against the family if a child enters foster care (i.e., as evidence of non-compliance with a pre-petition case plan)?
 - How might judges use prevention services to evaluate reasonable efforts to prevent removal?

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II. PARENT/CHILD RESIDENTIAL TREATMENT PLACEMENT QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

- **Agency recommendation:**
 - What criteria are used to determine if a child can be with a parent in a residential treatment placement?
 - Will age restrictions have implications for sibling placement together?
 - What challenges may arise if only one parent requires treatment and the other does not?
- **Interagency collaboration:**
 - Who is the client at the treatment facility?
 - What confidentiality limitations may exist between the facility and child welfare agency?
- **Judicial role:**
 - Must a petition be filed and presented to court to seek IV-E support for a child's placement with a parent in a residential treatment placement?
 - Based on state law, will judges have authority to order this placement or will it be subject to agency discretion for placement decisions?
 - Will the agency's placement decision be made in coordination with agency counsel?



III. REUNIFICATION SERVICES QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

○ Post-reunification services:

- Does the Family First change providing for 15 months post reunification services open up opportunities for greater post-permanency service provision that counsel can advocate for in proceedings or that a judge can order?

○ Post-reunification jurisdiction:

- What is the agency's responsibility for the child during the continuation of reunification services after the child has reunified?
- Does court jurisdiction continue? Should it continue?
- Should attorney appointment continue during reunification services for the agency/parent/child?
 - What if it's a multidisciplinary legal team that has been assisting with the provision of reunification services?



IV. QUALIFIED RESIDENTIAL TREATMENT PROGRAMS (QRTPs) QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

- **Judicial review:**
 - What criteria will the judge use to review the QRTP placement decision and follow up assessment at 60 days?
 - Will your state enact legislation to provide guidance on what criteria judges should use?
 - Will the qualified individual who conducts the assessment participate in court proceedings?
 - Can education stability factor into a judge's review when considering short - and long - term placement goals for the child?
- **Evidence:**
 - How should agency attorneys approach the requirement to submit evidence supporting a recommendation to maintain a QRTP placement?
 - What responsibilities do children's counsel and parent counsel have to challenge these recommendations and evidence in and out of court?
- **Family engagement:**
 - How can attorneys incorporate family members in the placement and treatment decision, including biological parents and kin?
 - What role will the judge have ensuring family members have been engaged in the process?
- **Youth engagement:**
 - What happens if a youth refuses a placement in a foster family home but doesn't meet the QRTP criteria?
 - How can youth counsel best advocate for the youth's interests?
 - How might this affect the role of parent counsel?
 - How might this affect the role of agency counsel?

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V. INAPPROPRIATE DIAGNOSIS PROTOCOLS QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

- **State protocols:**
 - What state protocols already exist to ensure children in foster care are not inappropriately diagnosed with mental illnesses, other emotional or behavioral disorders, medically fragile conditions, or developmental disabilities as required by Family First?
- **Interagency collaboration:**
 - Where can states seek assistance developing protocols?
 - What other government and non-government partners can help?
 - What roles for attorneys and judges?
- **Litigation:**
 - What legal risks and litigation have states and counties faced in this area?
 - How can protocols help prevent or respond to these challenges?

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VI. JUVENILE DETENTION QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

- **Reporting:**
 - What details must states provide to report on the numbers of children in juvenile detention to ensure no diversion?
 - What information sharing may be required?
 - Do any states already track this and compare with child welfare numbers?
- **Other correlations:**
 - Will your state track other potential risks (i.e. youth homelessness)?



VII. FOSTER PARENT RECRUITMENT AND RETENTION QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

○ **Legal barriers:**

- What legal issues have been identified as barriers for foster parent recruitment and retention in your state?
- What limitations on licensing standards most regularly affect kin caregivers? Other potential foster parent caregivers?
- Does the court regularly ask why a relative does not qualify for a foster care license if he/she is caring for a related child?



VIII. TRAINING AND EDUCATION QUESTIONS FOR LEGAL COMMUNITY ENGAGEMENT

- **What education and training may be needed on the legal implications of Family First:**
 - For caseworkers and supervisors
 - For agency counsel
 - For child and youth counsel
 - For parent counsel
 - For dependency judges
 - For other judges – delinquency, family court, treatment courts, domestic violence
 - For other attorneys – domestic violence, kinship, housing, legal aid, delinquency