



*Making the Legal System Work for Children and Parents*

**Document Purpose:**

To clarify the distinction between Title IV-E funding for legal representation and Title IV-E funding for Family First Prevention Services.

**Distinct Funding Mechanisms:**

In a recent policy change, the United States Department of Health and Human Services, Children's Bureau, has interpreted administrative costs for foster care to include costs for children's and parents' attorneys. As a result of this change, [Title IV-E funds are available to reimburse jurisdictions for parent and child legal representation.](#)

This funding for legal representation is distinct from IV-E funds available for prevention services under the [Family First Prevention Services Act.](#)

There has been some confusion in the field about whether Family First prevention services funding and federal funding newly available for legal representation are part of the same change in law and policy. They are not. Part of the confusion arises because legal services that help stabilize families are sometimes referred to as a form of "prevention." However, legal representation focused on prevention is different from Family First prevention services, which are specifically focused on mental health, substance use and parenting support services and have separate requirements for authorization through the Family First Clearinghouse.

**Complementary Use During Pre-Petition Stages of a Case:**

Although these two mechanisms for IV-E funding (legal representation and prevention services) are distinct, they do have the potential to be complementary. For example, IV-E representation funds may be used to cover costs of legal counsel that supports families during pre-petition stages of a case. In that situation, pre-petition legal representation could be provided at the same time as Family First prevention services.

There are two main reasons why states may choose to provide pre-petition legal representation at the same time as Family First prevention services:

- (1) Pre-petition legal representation can help stabilize the family in a way that complements the provision of prevention services (i.e., if legal services address family housing issues while prevention services address substance use; or if legal services

address education access for a child with special needs while prevention services address mental health or parent support needs in the home). Models of this kind of pre-petition legal representation have been used in Iowa, Michigan, Washington DC, New Jersey, and Oklahoma and have proven successful in minimizing the need to remove children from a family's home and place them in foster care.

(2) Additionally, pre-petition legal services can help ensure families understand their rights when consenting to voluntary Family First prevention services, especially in instances where a caseworker might recommend placement with kin during prevention services. Stanford Law School just published an [article on this topic](#) that raises concerns about how Family First implementation may violate rights to family integrity without the provision of legal services in cases that involve custody changes. By providing access to legal counsel during that process, parents and children's rights to consent to a custody transfer would be more clearly protected.

In any of these scenarios, federal support for pre-petition legal representation would be funded through a separate mechanism than Family First prevention services even if they occur at the same time. This also means these funding streams do not need to be chosen together. For example, a state could seek IV-E funding for pre-petition legal representation without moving forward yet with Family First prevention services. Similarly, a state could move forward with Family First prevention services funding and decide not to draw down IV-E funds to support legal representation, or could draw down attorney funding only for cases that are before a court after a petition has been filed but not for pre-petition legal representation.

For more information about how states are planning to use Title IV-E funding to support access to legal representation you can visit this [site on federal representation funding](#).

#### **About the Family Justice Initiative (FJI):**

In collaboration with a diverse team of partner organizations, the ABA Center on Children and the Law, the Children's Law Center of California, the Center for Family Representation, and Casey Family Programs launched the Family Justice Initiative (FJI) in 2016 with one unified goal:

*To ensure every child and every parent has high-quality legal representation when child welfare courts make life-changing decisions about their families.*

To learn more about how to support or join this initiative please visit:  
[www.familyjusticeinitiative.org](http://www.familyjusticeinitiative.org)