



# The Family First Prevention Services Act of 2018 A Guide for the Legal Community

December 2020

The Family First Prevention Services Act of 2018 (Family First Act or Family First) significantly changes how the child welfare system is funded and operates. Prioritizing the importance of children living with families, Family First includes a number of provisions related to prevention services, foster care placement, and transition from care.

## Purpose

In 2019, the American Bar Association Center on Children and the Law surveyed over 500 legal professionals about what they needed to better understand and implement the Family First Act. Most respondents (84%) said they would like an overview of the Act and clearer information about how it affects legal practice.

This Family First legal guide seeks to meet that request. It is designed to help attorneys, judges, magistrates, and court personnel:

- ❑ understand how the Family First Act changes federal child welfare law;
- ❑ identify opportunities to use the Act in legal advocacy and judicial decision making; and
- ❑ support implementation in a way that best serves children and families.

## Organization

The guide is organized chronologically following a family's potential involvement with the child welfare system. That chronology is grouped in three sections with additional provisions in a fourth section. Additional resources are included in four appendices.

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## Using this Guide

Each section highlights opportunities to use the Family First Act to inform legal advocacy and judicial decision making. For some topics, these opportunities are separated by role: child welfare agency counsel, child’s counsel, parent’s counsel, and judicial decision maker. In others, they are combined in one comprehensive list. These recommended advocacy efforts and decision-making considerations are not exhaustive but are a starting point for the practicing child welfare professional. Readers can also review the guidance for each advocate type to identify approaches that may apply to them and to understand others’ roles.

In addition, the legal community also should seek regular input on implementation from individuals with personal experience in child welfare, including as children, youth, parents, kin caregivers and resource families. Individuals with lived experience have a wealth of expertise to offer on the implementation of Family First Act provisions and their perspectives should be sought in a supportive environment where they can offer ideas safely and engage with ongoing reforms as part of an implementation team.

The opportunities and changes under Family First provisions affect child welfare practice in the 50 United States, District of Columbia, Puerto Rico, U.S. Virgin Islands, and Tribal Nations. This guide refers to these jurisdictions as “states and tribes,” with clarification where flexibility is available for tribes.<sup>1</sup>

This guide is designed to strengthen the legal community’s understanding and capacity to use provisions of the Family First Act. To provide a context for a conversation about the legal implications of implementation that can best be addressed through partnerships between the child welfare agency and service provider community working with families, attorneys, and judges in advance, the ABA Center on Children and the Law also has developed a [Tool for Engaging the Legal Community in Implementing the Family First Act](#).

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## a. Prevention services

"Given the intense emotional trauma associated with entering foster care, as well as the cost to both state and federal governments, there is great interest in identifying ways to promote family stability, reduce foster care entries and lengths of stay, and facilitate reunification and kinship placements." —U.S. House of Representatives

### What does this provision do?

The Family First Act provides new opportunities to increase supports that prevent a child's entry into foster care by providing select mental health, substance use, and parenting services that are now 50% reimbursable through federal funding.<sup>2</sup>

The law links availability of these funds to certain types of evidenced-based services and to compliance with other portions of the Act. States and tribes are not required to participate in these federal prevention services, however. Additionally, states and tribes may choose to provide a range of separate services that may not fall within these specific categories and are not eligible for federal reimbursement.

### Why was this provision included?

Historically, the federal government has only provided Title IV-E financial support to states after a child's removal from the family and placement in foster care. At the federal level, bipartisan leadership agreed to shift toward investing in supporting children within their families to prevent the need for removals when possible. A 2016 House Committee on Ways and Means Report provided some of the legislative intent that shaped this provision:

"The public and human cost of removing abused and neglected children from their birth families and caring for them in foster families, group homes, or institutions is substantial. State and federal expenditures in foster care totaled more than \$8 billion in fiscal year 2014 under title IV-E of the Social Security Act... The majority of children who enter foster care end up either reunifying with their parents or principal caretakers (51%) or going to live with a relative or guardian (15%). Given the intense emotional trauma associated with entering foster care, as well as the cost to both state and federal governments, there is great interest in identifying ways to promote family stability, reduce foster care entries and lengths of stay, and facilitate reunification and kinship placements."<sup>3</sup>

### How does this provision work?

#### Eligibility for services

Services may be offered for children who are "candidates for foster care," for their parents and caregivers, and for pregnant or parenting foster youth. (This description's use of "pregnant or parenting" aligns with the statutory text. Elsewhere, the legal guide refers to "expectant and parenting" youth to include fathers.) Family First defines "child who is a candidate for foster care" to mean "a child who is identified in a prevention plan under section 471(e)(4)(A) as being at imminent risk of entering foster care . . . but who can remain safely in the child's home or in kinship placement as long as services or programs specified in section 471(e)(1) that are necessary to prevent the entry of the child into foster care are provided."<sup>4</sup>

Eligibility is not limited to youth facing potential removal from their biological home of origin; children living in informal, kinship caregiver arrangements, as well as children whose adoptions or guardianships are at risk of dissolution are potential candidates under Family First's broad definition of candidacy. Additionally, individuals are eligible for prevention services regardless of whether the child meets Title IV-E income eligibility terms as required for federal support of foster care maintenance payments for a child.

The U.S. Department of Health and Human Services has urged states and tribes to further develop and adopt definitions of candidacy for foster care that reflect the needs and goals of their jurisdiction.<sup>5</sup> For information on state statutory and regulatory definitions of "candidate for foster care," see Appendix B.

The prevention plan for the child must:

- ❑ identify the foster care prevention strategy that allows the child to remain safely at home, live temporarily with a kin caregiver until reunification can be safely achieved, or live permanently with a kin caregiver; and
- ❑ list the services to be provided to the child or to eligible caregivers to ensure the success of that prevention strategy.

The prevention plan for a pregnant or parenting foster youth must:

- ❑ be included in the youth's foster care case plan;
- ❑ list the services to be provided to or on behalf of the youth to ensure the youth is prepared (in the case of a pregnant foster youth) or able (in the case of a

parenting foster youth) to be a parent; and

- ❑ describe the foster care prevention strategy for any child born to the youth.

### Services included

Under these Family First provisions, state and tribal agencies can seek federal reimbursement for prevention services that fall into three categories:

- ❑ in-home parent skill-based programs;
- ❑ mental health services; and
- ❑ substance abuse prevention and treatment services.

No matter the category, eligible services must meet certain requirements, with evidence they are successful programs. The service must be:

- ❑ described as part of a state's Title IV-E Prevention Plan;
- ❑ accompanied by a manual outlining the service's components;
- ❑ approved by the Title IV-E Prevention Services Clearinghouse<sup>6</sup> or be eligible for transitional payments "until the Clearinghouse can review and create a program or service, if a state submits sufficient documentation;"<sup>7</sup>
- ❑ trauma-informed; and
- ❑ rendered by a "qualified clinician."

Prevention services may be offered for 12 months per "episode," though sequential 12-month periods are permitted. The requirements for these services do not prohibit a state from offering other prevention services through state and local dollars or the more limited federal funding available through Title IV-B, Subpart 2, the Promoting Safe and Stable Families Program.<sup>8</sup> Indeed, a broad service array responsive to specific community needs is encouraged and Family First funding may be just one funding stream used to support a more comprehensive service array.

## How can the legal community use this provision to inform legal advocacy and judicial decision making?

### Child welfare agency counsel

- ❑ Advise caseworkers about Family First's opportunities and the value to children and their families of fully using prevention services before considering removal in cases involving mental health, substance use, or parental support needs.
- ❑ Educate the court and stakeholders about eligible [prevention services](#) offered in your jurisdiction.

- ❑ If a petition for removal must be filed after the agency provided services, prepare evidence of prevention services offered and rendered as an element of the agency's reasonable efforts to prevent removal.

### Child's counsel

- ❑ If you are appointed after a petition for removal has been filed, ask whether prevention services were offered before removal—including services for the parent, kinship caregiver, or child. If appropriate for your client's goals, advocate for prevention services as an alternative to removal.
- ❑ If the child is removed, request a copy of the family's prevention plan to review what the agency offered and whether reasonable efforts have been made to prevent removal especially in cases involving mental health, substance use, and parenting skills challenges (if necessary, request the prevention plan through the discovery process).
- ❑ If the child is removed, investigate whether kinship placement is possible that could be supported using prevention services as an alternative to foster care or that could be a kinship foster placement. Ask the child, if developmentally appropriate, to help identify possible kin resources.
- ❑ If the child is removed, ask whether placement in a family-based substance abuse treatment facility is feasible (described further in Part II.a, p. 9).
- ❑ If you represent an expectant or parenting teen in foster care, ask if the teen is interested in prevention services and advocate accordingly in the child welfare case.

### Parent's counsel

- ❑ If you are appointed when prevention services are provided, work with your client to ensure those services meet the client's needs and are voluntarily accepted.
- ❑ If you are appointed after a petition for removal is filed, advocate for prevention services to be offered as an alternative to removal—including services for the parent, kinship caregiver, or the child.
- ❑ If federally funded prevention services were used before the child's removal, ask whether they were provided with fidelity (e.g., according to written policy, frequency of service, targeted group).
- ❑ If prevention services were not offered before removal and the case involves mental health, substance use, or parenting skills, consider whether a fair hearing is warranted pursuant to federal regulations. These regulations provide that failure to offer or render prevention services is a possible basis for requesting an administra-



## Juvenile Justice Considerations

States and tribes may choose to define “candidates” for foster care prevention services to include youth in the juvenile justice system who are also at “imminent risk” of entering foster care. For example:

- ❑ Maryland recognizes “the intersection between those who have experienced maltreatment and engage in delinquent behaviors and could benefit from prevention services to avoid placement.”<sup>1</sup> Maryland includes children and youth with current state juvenile services involvement as “candidates” for Family First prevention services in the state’s Prevention Services Plan.
- ❑ Kansas includes youth with some involvement in the juvenile justice and child welfare systems as those potentially eligible for prevention services.<sup>2</sup>
- ❑ Utah permits juvenile justice caseworkers to use a risk assessment tool to identify a youth’s risk of entry into foster care.<sup>3</sup>

Juvenile justice practitioners can support effective Family First implementation by:

- ❑ joining discussions about how your state or tribe will define candidates for foster care prevention services; and
- ❑ ensuring prevention services provide for the needs of juvenile justice system-involved youth who also face removal from home.

### Juvenile Justice References

Campaign for Youth Justice. [Youth Justice and the Family First Prevention Services Act: Insights from a Convening of State and National Youth Justice Advocates](#), July 2020.

ACT4JuvenileJustice, Campaign of the National Juvenile Justice, and Delinquency Prevention Coalition. [Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration](#), July 2019.

#### Sources

<sup>1</sup> Maryland Department of Human Services, Social Services Administration. [Family First Prevention Services Act: Title IV-E Prevention Plan](#), 2020, 9 (approved by the Children’s Bureau in February 2020).

<sup>2</sup> See Kansas Department for Children and Families. [Kansas Prevention Plan: Five-Year Plan 2020-2024](#), 2020 (approved by the Children’s Bureau in May 2020).

<sup>3</sup> See Utah Department of Human Services, [Utah Title IV-E Prevention Program Five-Year Plan FFY 2020-2024](#), 2020, 27 (approved by the Children’s Bureau in December 2019).

tive hearing before an impartial hearing officer.<sup>9</sup>

- ❑ If the child is removed, request a copy of the family’s prevention plan to review what the agency offered and whether reasonable efforts have been made to prevent removal (if necessary, request through the discovery process). If reasonable efforts were not made, request a “no reasonable efforts” finding at the first hearing, and an order returning the child to the family with appropriate services.
- ❑ Ask your client to identify kin that may serve as a placement resource before or after removal.

### Judicial decision maker

- ❑ When reviewing a petition for removal, ask if the agency made reasonable efforts to prevent removal, which may include providing federally supported prevention services.
  - Invite discussion and debate among parties about whether the reasonable efforts finding is appropriate.
  - If reasonable efforts have not been made, consider court orders for prevention services that may allow the child to remain safely at home.
  - If reasonable efforts have been made, be specific about what measures constituted reasonable efforts when making written findings in the case.
- ❑ If removal occurs, ask about the agency’s diligent efforts to locate kin and support those placements. Consider court orders to refer kinship families to state or local kinship navigator programs and other supports as appropriate.
- ❑ In cases involving expectant or parenting youth in foster care, ask if the youth is interested in prevention services. Also determine what services can be provided for children in those teens’ care.

## How can the legal community support Family First implementation?

- ❑ Participate in your jurisdiction’s Family First task forces, subcommittees, or implementation teams.
  - Understand what prevention services are available, which are under development, and what the status of implementation is in your jurisdiction. Advocate for a broad service array that uses federal funding as a starting point (rather than a limit) for service options.
  - How will your jurisdiction define a “candidate for foster care” eligible for prevention services? Learn

what criteria the agency will use to determine if a family will benefit from prevention services.

- Collaborate with agency and system partners to determine whether attorneys will be assigned at the agency during prevention services and whether counsel for children or parents will be appointed during preresidential prevention services, and what advantages such appointment may provide.

#### *Agency counsel*

- Consider whether agency counsel will review individual determinations of prevention services eligibility.
- Offer agency attorney perspectives on whether all caseworkers can make determinations about prevention services or whether there may be distinctions between “prevention caseworkers” and others.
  - ◆ If these roles are distinct, does the same worker remain involved after a child enters foster care?
  - ◆ Do they have different reporting requirements, case obligations, and duties?

#### *Children’s counsel*

- Explore how children’s counsel can best assist expectant and parenting youth in foster care in accessing timely provision of prevention services and ensuring that the baby remains with the parent once born.
- Explore opportunities to support prepetition legal representation for homeless youth who may be eligible for services and support provided within the child welfare system.

#### *Parent’s counsel*

- A number of jurisdictions offer preremoval legal representation of parents when legal issues such as housing, domestic violence, public benefits, and education are the catalyst for agency involvement rather than safety concerns. Though not a part of the Family First Act, Title IV-E funding is now available for this type of prepetition legal representation, which can keep the family together, keep children in the home, and prevent the need for foster care.<sup>10</sup>
  - ◆ Explore with child welfare stakeholders and local legal service providers whether to access IV-E funding for this area.

- ◆ If so, ensure the participation of parent attorneys in developing the agency’s relevant referral process.

#### *Attorney funding considerations*

- Develop and amend any court rules regarding appointment, billing structures, or other logistical criteria as needed.
- Consider how the availability of Title IV-E funds for agency, child, and parent legal representation may factor into these decisions.<sup>11</sup>
- Explore as a team how the agency can ensure prevention services are accepted and provided voluntarily.
  - Consider whether the approach or understanding by parents may differ in situations where the child remains at home and situations where the child moves in with kin while prevention services are offered.
  - Discuss the agency practice around signing consents and safety plans during periods of prevention services to ensure compliance with HIPAA, federal regulations,<sup>12</sup> and state law. Consider policies that carefully balance how evidence of participation or nonparticipation in prevention services could be used if a child later enters foster care.
  - Include individuals with lived experiences as parents, children, or kin caregivers in the foster care system to discuss what would best serve family prevention services needs in the community. Partner with organizations such as the [Birth Parent National Network](#), [FosterClub](#), and [Generations United](#) that have professional expertise ensuring such engagement respects all viewpoints.
  - Examine racial disparities in using and accessing prevention services within the community. Partner with community leaders and families in and outside child welfare to develop approaches for resolving these disparities. This is important because research confirms, for example, that African American families are less likely to receive in-home services meant to address underlying causes of family crises that can lead to child removals.<sup>13</sup>
- Elevate and [recommend prevention programs](#) poised for federal [Title IV-E Prevention Services Clearinghouse Review](#).



## Research to Cite

Consider citing research on:

### Impact and efficacy of providing prevention services to families before removing a child from the home

- › ABA Center on Children and the Law & National Council of Juvenile and Family Court Judges. *Judge's Action Alert: Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, November 2020.

An alert for judges about early legal advocacy before a child is removed or an abuse and neglect petition is filed in court. It explains the benefits of this advocacy, how it supports judges' roles and ways they can support it, and how communities are using it in practice.

- › ABA Children's Rights Litigation Section. [Trauma Caused by Separation of Children from Parents: A Tool to Help Lawyers](#), January 2020.

This tool organizes dozens of research citations about how parent-child separation harms children.

- › ABA House of Delegates. [ABA Policy Resolution 118: Family Integrity and Family Unity](#), August 12-13, 2019.

Recognizes that “children and parents have legal rights to family integrity and family unity” and cites state laws across the country that codify those rights as fundamental liberty interests. The policy also calls for the use of “prevention services, including legal services, to ensure children's safety without the need for removal from a parent or caregiver.”

- › Child Welfare Information Gateway. [Issue Brief: In-Home Services in Child Welfare](#), March 2014. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

This federal resource acknowledges that “removing children from their families is disruptive and traumatic and can have long-lasting, negative effects” and highlights promising and best practices to provide services that successfully avoid family separation.

- › Doyle, Joseph J. [Child Protection and Child Outcomes: Measuring the Effects of Foster Care](#), 2007.

Examines the lives of children who entered foster care compared with children who were “on the margin of placement” but remained home rather than entering foster care. Those who stayed home experienced “better outcomes” and there were no significant benefits from foster care placement for children at the margin of foster care.

- › Family Justice Initiative (FJI). [Attribute 4: Timing of Appointment](#), 2019.

This guide on implementing FJI system attribute #4 on timing of appointment in child welfare cases explains the value of prepetition legal representation and describes several prepetition legal representation programs throughout the U.S.

- › Goydarzi, Sara. [“Separating Families May Cause Lifelong Health Damage.”](#) *Scientific American*, June 2018.

An interview with noted pediatrician Dr. Alan Shapiro about the dangers of parent-child separation; although the context for this article is the immigration crisis at the U.S. southern border, Dr. Shapiro's discussion of the Adverse Childhood Experiences (ACEs) study and the overall childhood neurological response to separation is relevant to domestic child welfare advocacy.

- › National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee. [Trauma: What Child Welfare Attorneys Should Know](#). Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress, 2017.

Posits that “[i]n addition to situations of abuse or neglect that lead to their removal from their homes, children in care may experience further stresses after entering the system. Separation from family, friends, and community is often referred to as system-induced trauma.”

- › Mitchell, Monique. *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. New York: Oxford University Press, 2016.

A study of foster children that examines the acute feelings of grief and ambiguity that occur when children are separated from their families even to serve their “best interests.” Dr. Mitchell equates this experience for the child to a feeling of mourning the loss of the parent as much as if she had died, a feeling augmented by separation from siblings and other members of one's family and community.

- › Sankaran, Vivek, Christopher Church & Monique Mitchell. “[A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families.](#)” *Marquette Law Review* 102(4), 2019, 1163-94.

Describes, *inter alia*, how removal and placement in foster care can cause or compound complex trauma in children due to various factors, including multiple placements, relationship ambiguity, and ambiguous loss. See endnote 18 for cites to several compelling reports.

- › Segrue, Erin. Ph.D., LICSW. [Evidence Base for Avoiding Family Separation in Child Welfare Practice: An Analysis of Current Research.](#) Alia Innovations, July 2019.

Concludes that “for children who have experienced maltreatment, out-of-home placement provides little to no measurable benefit in terms of cognitive or language outcomes, academic achievement, mental or behavioral health, or suicide risk.”

- › Trivedi, Shanta. “[The Harm of Child Removal.](#)” *NYU Review of Law & Social Change* 43(3), 2019.

Part II summarizes research on “the myriad negative outcomes” resulting from removal and placement in foster care, including emotional, psychological, physical and sexual health problems, and cultural detachment, that manifest in the short and long term.

- › U.S. Children’s Bureau “[Information Memorandum: Reshaping Child Welfare in the United States to Focus on Strengthening Families through Primary Prevention of Child Maltreatment and Unnecessary Parent-Child Separation.](#)” ACYF-CB-IM-18-05. November 2018.

In this comprehensive guidance, the federal agency that oversees foster care emphasizes focusing on primary prevention and specifies the role courts and attorneys can play in these efforts. It explains that “primary prevention services must be located in communities where families live, easily accessible, and culturally responsive. Those services should also focus on the overall health and well-being of both children and families and be designed to promote resiliency and parenting capacity.”

- › Wan, William. “[What Separation from Parents Does to Children: ‘The Effect is Catastrophic,’](#)” *Washington Post*, June 18, 2018.

Shares social science research on family separation, with a focus on the harm to the developing child brain.



### a. Family-based substance use treatment setting

#### What does this provision do?

This provision changes federal law to allow federal maintenance payments for the cost of caring for a child who lives with a parent in a family-based residential facility licensed to provide substance use treatment for adults.<sup>14</sup>

#### Why was this provision included?

This provision recognizes that children should remain with their parents when it is safe to do so because separation is traumatic and remaining together while parents receive treatment can improve overall outcomes for children. For example, research shows children who are exposed to substances in-utero and remain in their mother's care have better developmental outcomes than infants who are placed in foster care.<sup>15</sup> This provision also recognizes that parents, especially mothers, fare better in terms of their physical and mental health when children remain in their care.<sup>16</sup> (See *Research to Cite: Family-Based Substance Use Treatment Setting* for research supporting these points.)

Although effective substance use treatment programs exist in which children remain with their parents, a lack of funding for the child's care while a parent is in residential substance use treatment is a barrier. Parents' costs while in such treatment are often covered through Medicaid but the child's costs of care have historically not been covered through a parallel funding stream. The change in the Family First Act addresses this barrier by allowing maintenance payment funding to be used for the child's costs.

This provision is important because of the high numbers of cases involving parents' substance use disorder and young children. Recent data reported in the Adoption and Foster Care Analysis Reporting System (AFCARS) shows more than 41% of entries into foster care in 2018 involved drug use or alcohol abuse.<sup>17</sup> AFCARS data also show that 39% of all entries to care involve children three years old or younger and 19% of all entries to foster care involve children under one year old.<sup>18</sup> Having options where parents can receive treatment for substance use while maintaining a caring relationship with their young children helps address these issues.

#### How does this provision work?

- ❑ The federal law requires that the child be "placed" in foster care to be eligible for placement with a parent in a treatment center.<sup>19</sup>
- ❑ The recommendation must be specified in the child's case plan before the child begins to live in the treatment center.
- ❑ The treatment facility must provide, as part of the treatment for substance use disorder, parenting skills training, parent education, and individual and family counseling.
- ❑ The treatment framework must be trauma informed.
- ❑ States and tribes can access this federal funding for up to 12 months.
- ❑ To seek reimbursement for maintenance costs the agency must show the child meets the eligibility requirements for Title IV-E Foster Care Maintenance Payments either through a voluntary placement agreement or a judicial determination.<sup>20</sup> The child does not need to meet the Title IV-E income eligibility requirements.

#### How can the legal community use this provision to inform legal advocacy and judicial decision making?

##### Child welfare agency counsel

- ❑ Talk with the caseworker about whether placement with a parent during treatment is advised to facilitate a reunification goal and minimize the trauma of separation.
- ❑ Consider other federal requirements, such as the need to ensure a child is placed in the "least-restrictive,"<sup>21</sup> most family-like setting while in foster care, which may include keeping the child with a parent if possible.
- ❑ Research the availability of this type of placement in the community.<sup>22</sup>
- ❑ Discuss this option with the child's attorney and the parent's attorney to determine if other parties agree this would be a valuable placement recommendation.
- ❑ Support the caseworker's placement recommendation in the case plan and prepare to advocate for that placement in court if needed. Consider tying support to legal requirements regarding placement determinations such as those outlined in federal law.<sup>23</sup>
- ❑ If this placement is not advisable, prepare to explain why it would not best serve the child's needs and case plan goals.

## Child's counsel

- ❑ Consider how this placement option may serve your client's interests when the case plan goal is reunification and the primary basis for child welfare involvement is parental substance use. In most cases, it will be difficult to discuss directly with a child because this option is primarily targeted to infants and very young children but there are multiple ways to provide high quality legal advocacy for young children.<sup>24</sup> Relatedly, you can:
  - Look at the potential medical and social benefits of keeping the child with a parent to enhance bonding.
  - Understand how the parent's access to counseling and parent education may help the child while with the parent.
  - Evaluate the trauma-informed care provided to children in the setting.
  - Examine whether the child has any heightened medical needs that would or would not be met at the residential treatment facility.

## Parent's counsel

- ❑ Talk with your client about this option and share details about [where potential facilities exist](#).
- ❑ Discuss the availability of such placements with the agency attorney, caseworker, and child's attorney.
- ❑ If the parent supports this placement option, advocate for the caseworker to include it in the case plan. Cite research and case law recognizing the importance of early attachment and parent-child bonding (see *Research to Cite* below for more resources). If it is not offered, advocate for the judge to inquire why it is not an option.
- ❑ If there is a possibility the child would not otherwise be placed in foster care and could remain at home, discuss with the parent that because the residential treatment option requires foster care placement there may be implications for the termination of parental rights (TPR) timeline in federal and state law.
- ❑ Ask agency counsel and the caseworker whether residential placement with a parent could constitute compelling reasons not to seek TPR if the parent requires treatment for longer than 15 months while the child is considered "placed" in foster care.<sup>25</sup>

## Judicial decision maker

- ❑ If the case plan includes a recommendation for the child to be placed with a parent in a residential substance use treatment facility, ask how this will best serve the child's interests and the family's reunification goals.

- ❑ Ask about the timing and availability of such placements in the community.
- ❑ Ask about the potential implications for the 15-month timeline and if the agency anticipates considering such placement to constitute "compelling reasons" for not filing a TPR petition<sup>26</sup> if the parent requires treatment for more than 15 months and the child remains "placed" in foster care.
- ❑ Review and cite medical research and case law supporting parent and infant bonding, especially during the early stages of development, as part of a judicial decision to support such placements. (See *Research to Cite: Family-Based Substance Use Treatment*)
- ❑ If the case plan does not include this recommendation but substance use is a primary factor in the case and the child is young, ask why placement with the parent in residential treatment is not a viable alternative to parent-child separation to support the "least-restrictive" placement as required by federal and most state law.
- ❑ Consider how co-location of a child with a parent fits into the judicial inquiry about reasonable efforts to prevent removal and reasonable efforts to support reunification.

## How can the legal community support Family First implementation?

- ❑ Consult the [Directory of Residential Substance Use Disorder Treatment Programs for Parents with Children](#)<sup>27</sup> for facilities in almost every state to identify programs in your community.
- ❑ If your community has options for this kind of placement learn about them and how they work (e.g., waitlist policies, primary client base, age limits for children, total family size limits).
- ❑ If programs exist but are not used regularly within the child welfare system, identify and understand the barriers and reasons children are not placed in the facility and work together to overcome those issues.
- ❑ If your community does not have a licensed facility for children to be with parents during residential substance use treatment, work collaboratively with the child welfare agency, Department of Health, substance use treatment providers, families, and others to create one. Look at programs that exist in nearby states to seek guidance and information about how to structure something similar in your community.
- ❑ Familiarize yourself with medical and legal research concerning trauma from family separation and research

on substance use disorders and effective treatments to ensure all stakeholders understand the benefits of treatment that minimizes the risk of separation.

- Work with legislators and policymakers to identify options for addressing the potential implications of the 15-month timeline for families in this kind of placement setting. For example, Oregon pays for these

placements with state rather than federal funds to avoid the need for official foster care placement of the child and the triggering of the 15-month timeline.

- Examine disparities in access to treatment facilities for families of different racial and ethnic backgrounds. Partner with community leaders to identify causes for these disparities and address them directly.

## Family-Based Substance Use Treatment



### Research to Cite

Consider citing information on:

#### Importance of early attachment and parent-child bonding

- › Abrahams, Ron & Nancy Rosenbloom. “[Effective Strategies for Courtroom Advocacy on Drug Use and Parenting](#),” *Child Law Practice Today*, October 2019.

Explains that “[w]ith a harm reduction approach, health care providers, child protection workers, attorneys, and judges should [or would] base their understanding about the effects of drug use during pregnancy on scientific evidence, and view mothers who have used drugs as entitled to high-quality, evidence-based care if they need it, along with respect and support.”

- › Children and Family Futures. [Infants with Prenatal Exposure](#) (web page).

Includes resources to support pregnant and postpartum women and their infants with prenatal substance exposure for optimal bonding, health, and well-being.

- › Committee on Supporting the Parents of Young Children Board on Children, Youth, and Families Division of Behavioral & Social Sciences and Education. [Parenting Matters: Supporting Parents of Children Ages 0-8](#). National Academies: Sciences, Engineering, & Medicine, 2016.

Explains that “young children who do not become securely attached with a primary caregiver (e.g., as a result of maltreatment or separation) may develop insecure behaviors in childhood and potentially suffer other adverse outcomes over the life course, such as mental health disorders and disruption in other social and emotional domains.”

- › Howard, Kimberly et al. “[Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families](#).” In *Attachment & Human Development* 13(1), 2011, 5.

Explains that “a central component of attachment theory is the notion that caregivers must be present and accessible in order for their children to become attached to them.”

- › Maze, Candice L. [Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation](#). ABA Center on Children and the Law, October 2010.

Explains that “[b]ecause very young children, especially those under three years old, do not function independently, but in relationship to others, the quality of their relationships with biological and substitute caregivers largely determines their physical, social/emotional, and cognitive developmental processes.”

- › National Center on Substance Abuse and Child Welfare. [Drug Testing in Child Welfare](#), 2010.

Asserts that, given no other safety concerns, “a positive drug test or a series of positive drug tests should not be used as the sole determining factor in the removal of a child from the home or to determine parental visitation.”

- › National Council of Juvenile and Family Court Judges. [Enhanced Resource Guidelines](#), 2016.

Section P addresses “Best or Promising Court Practices to Encourage Safe and Timely Permanency” and explains “[b]ecause a child’s first three years of life are an essential time for attachment and relationship-building, disruptions during this period can present special challenges. The early building of positive child-parent relationships begins with sensitive nurturing, protection, and physical proximity that is consistent across time.”

- › **Quality Improvement Center Collaborative Community Court Teams and ABA Center on Children and the Law.** [\*Reasonable and Active Efforts, and Substance Use Disorders: A Toolkit for Professionals Working with Families in or at Risk of Entering the Child Welfare System\*](#), undated.

Addresses challenges presented in making reasonable and active efforts and related judicial findings in cases involving substance use. The toolkit provides definitions, statutory requirements, examples of reasonable and active efforts, and a resource guide.

- › **Smariga, Margaret.** [\*Visitation with Infants and Toddlers in Foster Care\*](#). ABA Center on Children and the Law & ZERO TO THREE National Policy Center, 2007.

Notes that “Secure and stable attachments with a primary caregiver form the foundation for a child’s social, emotional, and cognitive development. Children who

develop secure attachments show a greater capacity for self-regulation, effective social interactions, self-reliance, and adaptive coping skills later in life.”

- › **Wall-Wieler, Elizabeth et al.** “[Mortality Among Mothers Whose Children Were Taken Into Care by Child Protection Services: A Discordant Sibling Analysis](#).” *American Journal of Epidemiology* 187(6), June 2018, 1182–1188.

Finds that mothers whose children were placed in care were 3.5 times more likely to die from avoidable causes (e.g., unintentional injury and suicide), and 2.9 times more likely to die from unavoidable causes (e.g., car accidents and heart disease).

## b. Foster family home setting

### What does this provision do?

The Family First Act prioritizes placement in a family foster home setting and defines a safe, homelike setting for children in foster care. The Act also provides model federal licensing standards to guide jurisdictional standards for foster family homes and encourages using licensed kinship foster homes through these standards.<sup>28</sup>

### Why was this provision included?

These changes draw from what the child welfare community has long noted: children in foster care benefit from being in family settings rather than group care settings. Research also clearly reflects improved child welfare outcomes of safety, permanency, and well-being when children are placed with kin caregivers.<sup>29</sup> A driving message of the Family First Act is that children who cannot safely remain in their parents' care should live in the most family-like, least-restrictive settings possible to meet their needs.<sup>30</sup> It also builds on the importance of maintaining a child's connections to relatives and close friends, an approach recognized in the Fostering Connections to Success and Increasing Adoption Act of 2008 and prioritized in most states' statutes.<sup>31</sup>

### How does this provision work?

Expanding on the basic pre-existing federal description of the term,<sup>32</sup> the Family First Act defines a “foster family home”<sup>33</sup> to be one that is the home of an individual or family licensed or approved by the state who meets the standards established for licensing or approval and:

- ❑ provides 24-hour care for the child;
- ❑ adheres to the reasonable and prudent parent standard established by the Preventing Sex Trafficking and Strengthening Families Act of 2014;<sup>34</sup> and
- ❑ cares for no more than six children in foster care.

The Act prioritizes meeting the needs of children and youth in care, and carves out exceptions to the maximum number of six children in foster care per home for:

- ❑ a parenting youth in care to remain with his or her child;
- ❑ siblings to remain together;
- ❑ a child with an established meaningful relationship with the family to remain with the family; and

- ❑ a child with a “severe disability” whose needs can be met by a family with special training or skills.

### Licensing standards

The Family First Act further emphasized the importance of safe family-based settings by calling for national foster family home licensing standards. Pursuant to a requirement of the Act, in February 2019, the U.S. Department of Health and Human Services (HHS) released National Model Foster Family Home Licensing Standards<sup>35</sup> that apply to relative and nonrelative foster homes and are based on a model developed by the National Association for Regulatory Administration (NARA), ABA Center on Children and the Law, and Generations United.<sup>36</sup>

The Family First Act also required states and tribes to compare their own foster family home standards to the national standards and report to HHS whether the state licensure rules were consistent with the national model and explain any inconsistency. This required review allowed states and tribes to revisit unnecessary or out-of-date licensing standards and increase the number of safe, appropriate foster family home settings.

### Kinship caregiver support

Although kinship care has steadily increased nationwide over the years, some states do not license these kinship caregivers. As a result, those homes are subject to agency rules and restrictions, but provide limited or no financial and other support to caregivers. To help address this problem, the Family First Act requires states to identify which non safety licensing standards for relative foster family homes are most commonly waived and describe whether a process or tools for waivers exists, how caseworkers are trained to use the waiver authority, and how the process is being improved.<sup>37</sup> This effort is designed to eliminate barriers created by state standards so more relatives can be licensed as foster parents and access related supports and clear paths toward permanency for children.

### How can the legal community use these provisions to inform legal advocacy and judicial decision making?

#### Child welfare agency counsel

- ❑ Consider whether your jurisdiction includes and engages “fictive kin”—godparents, trusted teachers and coaches, and religious leaders—under the definition of “relative” to be notified when a child is removed from their family.



## Additional Support for Kin Caregivers

### Kinship Navigators

The Family First Act encourages broader use and support of kinship caregivers by supporting increased use of kinship navigators.<sup>1</sup> Some kinship navigators were first federally funded under the Fostering Connections grants with the goal to assist caregivers by providing information about programs and services to meet the needs of children they are raising and their own needs, and can serve all kinship families regardless of eligibility for federal foster care payments.<sup>2</sup> The Family First Act gives states the option to offer these programs and access federal reimbursement for doing so.

### Supports to Improve Kin Caregiving

In 2020, the Children’s Bureau also issued [Technical Guidance](#) providing that states and tribal grantees may use kinship navigator funds to provide brief legal services to “assist kinship caregivers in learning about, finding and using programs and services to meet the needs of the children they are raising and their own needs.”<sup>3</sup> This may include “support[ing] any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving.”<sup>4</sup>

#### Sources

<sup>1</sup> Learn more about [your state kinship navigator](#).

<sup>2</sup> See 42 U.S.C. § 627

<sup>3</sup> See section 427(a)(1) of the Act; See also Children’s Bureau. [Technical Bulletin: Frequently Asked Questions: Independent Legal Representation](#), July 20, 2020.

<sup>4</sup> *Id.*

- ❑ Determine whether the kinship caregiver for the child understands the different placement and permanency options, including, if available, Title IV-E Guardianship Assistance Program.<sup>38</sup>
- ❑ If the kin caregiver is not licensed as a foster home, determine why.
  - If a licensing barrier exists, can it be fixed or waived?
  - Is the caseworker trained and familiar with the waiver process in your jurisdiction?
  - Note that it is the agency’s decision to license a foster home and the court cannot order a home to be licensed.

### Child’s counsel

- ❑ Advocate for the least-restrictive placement setting while in foster care, giving priority to kin placements

rather than a foster family with no prior connection to the child.

- ❑ Ask the child who in their family they may want to live with while in foster care. Ensure all adult relatives have been notified of the child’s removal and entry into foster care as required by federal law and allowed an opportunity to stay connected to the child.
- ❑ If you represent siblings, advocate for placement together in a kin home or foster family home, unless there is a safety reason this would not be best for each of your clients.
- ❑ If you represent an expectant youth determine whether your client wants to remain in the same foster family home after the child is born. If so, advocate for that option. If not, why not and what can be done to achieve your expectant client’s goals?
  - Assess what services should be offered now and after the baby is born and advocate that those services are provided to your client promptly.
- ❑ If the child has a severe disability, determine whether this foster family home is able to provide tailored services and support. Identify whether the foster family home needs additional supports and training to care for the child and advocate accordingly.

### Parent’s counsel

- ❑ Explore what efforts have been made to identify, notify, and engage all adult relatives. Have both parents’ relatives been identified, notified, and engaged?
- ❑ Ask your client to identify potential kin placements and family connections. Do the parents have preferences concerning which adult relatives would best care for the children?
- ❑ Are siblings placed together? If not, is it because it would affect the safety or well-being of any of the siblings to place them together, per the Fostering Connections to Success and Increasing Adoptions Act of 2008?<sup>39</sup> Are the siblings visiting regularly?
- ❑ Assess whether the parents have regular communication with the resource family. If not, consider if there are ways to promote communication.

### Judicial decision maker

- ❑ Consider how the current placement meets the child’s needs. If the child is not with kin, why not? If the child is not in a foster family home setting, why not? If the child is not placed with siblings, why not?
- ❑ Explore what efforts have been made to identify, notify, and engage all adult relatives. Each party should play

a role in creating a support network for the family—whether as a placement option, a visitation resource, or a supportive role for family.

- ❑ Determine whether the child is regularly visiting parents, relatives, and siblings if not in the same placement setting.

## How can the legal community support Family First implementation?

- ❑ Join your state's discussion about how to improve recruitment and retention of foster family homes. Solicit input from current and former resource families about what barriers they experienced in becoming licensed foster parents or why they chose not to continue in that role.
- ❑ Make sure you are familiar with the licensing requirements for all foster homes, as well as the foster parent licensure waiver practices for kinship caregivers in your jurisdiction.

- ❑ Become involved in your state's efforts to align the state licensing standards with the National Model Foster Family Home Licensing Standards.
- ❑ Identify and understand common barriers to licensing kin. Are they being addressed by your standards, waivers, or other processes?
- ❑ Find out if your state has a kinship navigator program (see *Additional Support for Kin Caregivers* sidebar). Did your jurisdiction receive federal kinship navigator program funding to develop, enhance, or evaluate kinship navigator programs? If so, join your jurisdiction's efforts to maximize this funding. Help determine if this program will serve kinship families both inside and outside the child welfare system.

In developing and operating a kinship navigator program, encourage your jurisdiction to engage relative caregivers and community-based organizations with experience serving kinship families both inside and outside the child welfare system.

### Foster Family Home Setting



## Research to Cite

Consider citing information on:

### Benefits of family-based care over institutional and group care

- › The Annie E. Casey Foundation. [\*Every Kid Needs a Family Policy Report\*](#), May 19, 2015.

Explains the developmental benefits of family-based care by age group and compiling research to show that “children who live in a family while in the child welfare system are better prepared to eventually thrive in a permanent home, whether that involves a return to their birth parents, permanent placement with kin, or non-kin adoption.”

- › American Orthopsychiatric Association. [\*Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association\*](#), 2014.

A consensus opinion by internationally recognized researchers that explains why group-care settings can harm the well-being of youth and that “children and adolescents have the need and right to grow up in a family with at least one committed, stable, and loving

adult caregiver” because healthy attachment to a parent figure is necessary for children of all ages to reduce problem behaviors and interpersonal difficulties. As a result, “group care should never be favored over family care. Group care should be used only when it is the least detrimental alternative.”

- › Barth, Richard P. [\*Institutions vs. Foster Homes: The Empirical Base for a Century of Action\*](#). Chapel Hill, NC: Jordan Institute for Families School of Social Work, June 17, 2002.

Demonstrates that when compared with children in family foster care, children in group settings “have fewer interpersonal experiences that support their well-being, including the chance to develop close relationship with a significant individual who will make a lasting, legal commitment to them.”

- › Center on the Developing Child at Harvard University. [\*The Foundations of Lifelong Health Care Built in Early Childhood\*](#), 2012.

Explains the benefits of high-quality family foster care in relationship with institutional care where “basic needs for food, warmth, shelter, and medical care may be met, thereby avoiding most legal definitions of neglect,” but children’s “psychosocial needs” are often not met because they lack access to a stable adult-child relationship that promotes consistent, rewarding interaction and development.

## Benefits of kin placements

- › Bissell, Mary. “[Recruiting and Supporting Kinship Foster Families](#).” *ABA Child Law Practice*, July/August 2017.

Addresses licensing barriers by explaining that “in many states, current licensing requirements, such as those addressing square footage and unnecessary educational requirements (e.g., requiring a high school diploma), are aimed almost exclusively at nonrelative foster care placements. State child welfare agencies must carefully review and amend their current standards to eliminate unnecessary barriers that keep quality and caring relatives from becoming licensed foster families.”

- › ChildFocus. [Foster & Kinship Parent Recruitment and Support Best Practice Inventory](#), undated.

An inventory of key steps to finding and keeping quality kin caregivers.

- › Epstein, Heidi Redlich. “[Kinship Care Is Better for Children and Families](#).” *Child Law Practice Today*, July/August 2017.

Explains multiple benefits of kin placements for children, including that “Children in the care of relatives experience increased stability, with fewer placement changes, decreased likelihood of disruption and not as many school changes. Relatives are more likely than nonrelatives to support the child through difficult times and less likely to request removal of problem children to whom they are related. The children themselves generally express more positive feelings about their placements and are less likely to run away.”

- › Generations United. [Children Thrive in Grandfamilies](#).

Outlines benefits of relative placements, including higher rates of permanency because children in kin care are “less likely to re-enter foster care after returning to birth parents” and because relatives are often more willing to adopt or become permanent guardians when reunification with parents is not possible. This is underscored by national data showing 32% of children adopted from foster care are adopted by relatives.

- › [Grandfamilies.org State Laws Database](#)

A searchable database of state laws relating to kin placements for children in foster care.

- › Konijn, Carolein, et al. *Foster Care Placement Instability: A Meta-Analytic Review*. *Children and Youth Services Review* 96, 2019, 483-499.

A study of foster care placement stability factors between 1990-2017 that concluded children placed with non-kin were more likely to experience placement disruption, a finding that was especially notable for younger children.

- › 110<sup>th</sup> U.S. Congress. [Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351 \(2008\)](#).

Emphasizes family finding, notice to relatives, kinship navigator funding, and prioritizing kin placement. To further support these points, see:

[Placement of Children with Relatives](#)

[Fostering Connections—Summary and Analysis](#)

[Foster Care Licensing—Summary & Analysis](#)

## Licensing standards and waiver options

- › Beltran, Ana & Heidi Redlich Epstein. “[New Model Family Foster Home Licensing Standards: An Overview](#).” *Child Law Practice Today*, February 2015.

Provides a detailed summary of the 2014 Model Family Foster Home Licensing Standards.

- › National Association for Regulatory Administration, ABA Center on Children and the Law, Generations United & Annie E. Casey Foundation. [Model Family Foster Home Licensing Standards](#), 2018.

Originally published in 2014 as the first comprehensive model family foster home licensing standards. The accompanying [Model Family Foster Home Licensing Standards Cross-Walk Tool](#) (updated 2019) helps states and tribes compare their current foster care licensing standards with the National Model Family Foster Home Licensing Standards and the NARA Model Licensing Standards.

- › U.S. Department of Health and Human Services, Administration for Children and Families. [ACYF-CB-IM-19-01: National Model Foster Family Home Licensing Standards](#), Feb. 4, 2019.

Issues national model licensing standards for foster homes and reminds agencies that they may waive nonsafety licensing standards for relative foster family homes.



## Ensuring caregivers meet the “reasonable and prudent parent” standard

- › Epstein, Heidi Redlich and Anne Marie Lancour. “[The Reasonable and Prudent Parent Standard.](#)” *Child Law Practice Today*, October 2016.

Explains that under federal law caregivers must use a “reasonable and prudent parent standard” when supporting a child in foster care’s participation in extracurricular, enrichment, cultural, and social activities, and the child welfare agency must provide the court with information that the reasonable and prudent parent standard is being followed.

## Supporting joint sibling placements

- › Child Welfare Information Gateway. “[Sibling Issues in Foster Care and Adoption.](#)” *Bulletin for Professionals*, June 2019.

Cites research that shows “placing siblings in the same foster home is associated with higher rates of reunification, adoption, and guardianship” and including

guidance on the legal framework for protecting sibling connections.

- › Kernan, Emily. [Keeping Siblings Together: Past, Present and Future.](#) *National Center for Youth Law News* 26(4), January 1, 2006.

Shows “children who are placed with their siblings tend to experience fewer disruptions in their placements.”

## Advocating for family-based placements for children with significant disabilities

- › American Academy of Pediatrics. “[Out-of-Home Placement for Children and Adolescents with Disabilities—Addendum: Care Options for Children and Adolescents With Disabilities and Medical Complexity.](#)” *Pediatrics* 138(6), December 2016.

Explains that “[c]hildren with significant disabilities and complex medical conditions, like all children, need stable homes with loving families and caregivers who provide the essential physical and emotional resources to promote wellbeing.”

## c. Group setting

### What do these provisions do?

Under Family First, states and tribes may no longer access federal Title IV-E foster care funds to pay for a child's stay in a traditional, nonspecialized group home or residential care setting after a two-week period.<sup>40</sup>

Beginning the third week of the child's placement, IV-E funding will only be available to support the following four types of nonfamily placements:

- ❑ a setting specializing in providing prenatal, postpartum, or parenting supports for youth;
- ❑ a supervised independent living setting for youth ages 18 and over;
- ❑ a high-quality residential care setting for youth who are victims or at risk of becoming victims of sex trafficking; and
- ❑ a residential placement to meet the therapeutic needs of children and youth with serious emotional or behavioral disorders or disturbances, which is called a qualified residential treatment program (QRTP).

Each IV-E reimbursable placement setting is detailed in the following sections.

In all four categories, federal law requiring that children in foster care reside in the “least-restrictive”<sup>41</sup> setting continues to apply, and kin and foster family home settings should remain a high priority option whenever possible to meet a child's unique needs.

Another provision of law that continues to apply when a child is in one of these four group settings is the “reasonable and prudent parent” standard (also known as the “normalcy” provisions) introduced through the Preventing Sex Trafficking and Strengthening Families Act of 2014, which provides that all children in foster care should have opportunities to “participate in extracurricular, enrichment, cultural, and social activities.”<sup>42</sup>

Similarly, the education stability provisions of the Fostering Connections to Success and Increasing Adoptions Act and the Every Student Succeeds Act apply for all children in group placements, meaning children's educational needs and ability to continue attending their school of origin should be prioritized while in a group setting.<sup>43</sup>

### Why were these provisions included?

These changes reflect a primary aim of the Family First Act to encourage states to rely less on congregate care

placements and prioritize the longstanding requirement that children whose placements are funded partly by federal Title IV-E foster care funds are in the least-restrictive, most appropriate placement setting.

### How do these provisions work?

The Family First Act identifies four nonfamily placement types that may be reimbursable with IV-E funds under Family First. An explanation of four provisions outlining each placement type follows, with recommendations for using the provisions to inform legal advocacy and support implementation in your community.

#### Group Setting One: Prenatal, Postpartum, or Parenting Supports for Youth

One of the four nonfamily placement types that may be reimbursable with IV-E funds under Family First is a placement setting with prenatal, postpartum, or parenting supports for youth.<sup>44</sup> State and tribal agencies could already access IV-E funds to reimburse costs of this placement setting with these types of supports for youth, and may continue to do so under Family First.

### How can the legal community use this provision to inform legal advocacy and judicial decision making?

#### Child welfare agency counsel

- ❑ Confirm the current placement is appropriate to meet the needs of the expectant or parenting youth and their children. If not, are other placements available that would better meet all needs, including through kin caregivers, family-based settings, or group settings?
- ❑ If a group setting is the most appropriate option, will the agency seek federal funds and how will the agency state the basis for placement in this group setting?
- ❑ Determine whether the youth has a prevention plan included in his or her case plan.
  - Does it list services or programs to be provided to or on behalf of the youth to ensure the youth is prepared (in the case of an expectant youth in care) or able (in the case of a parenting youth in care) to be a parent?
  - Are those services being provided? If not, what are the barriers and how can they be addressed?



## Mental Health Diagnosis Protocols

The Family First Act requires state and tribal child welfare agencies develop procedures and protocols to prevent children from being inappropriately diagnosed with mental illness, other emotional or behavioral disorders, medically fragile conditions, or developmental disabilities.<sup>1</sup> These measures, which are to be part of the state or tribe's IV-B plan, must also ensure that children are not placed in group settings as a result of an inappropriate mental health diagnosis.

### Prescription medication monitoring

The focus on this area builds on the recognition over the last decade that children in foster care were not only being diagnosed with mental health conditions at alarming rates but were also being overprescribed psychotropic medications with minimal consideration or oversight. The protocol requirement builds on previous federal law requiring states to develop plans with coordinated strategies to identify and respond to children's mental health care needs, including monitoring prescription medications.<sup>2</sup>

### Trauma-informed treatment

Additionally, trauma-related behaviors were too commonly identified as a behavioral disorder that would lead to a child's removal from a family foster home and placement in a group home or residential treatment facility. The Family First provisions are designed to meet the needs of children and youth with serious emotional or behavioral disorders through evidence-based, trauma-informed treatment models.

### Placement determinations using evidence-based assessments

Under Family First, the Secretary of the U.S. Department of Health and Human Services is to identify best practices in this area after evaluating existing state procedures and protocols, as well as agencies' efforts to comply with and enforce them.<sup>3</sup> This requirement aligns with the goal of ensuring children receive services with demonstrated effectiveness as part of evidence-based practices and policies, including use of validated, evidence-based assessment tools to determine the appropriate placement setting.

#### Sources

<sup>1</sup> See Family First Act Sec. 50743(a).

<sup>2</sup> See Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351, Sec. 205.

<sup>3</sup> See Family First Act Sec. 50743(b). This evaluation was to be submitted to Congress by January 1, 2020; no such report has been made public to date.

- What federally supported prevention services are available?
- Does it describe the foster care prevention strategy for any child born to the youth?

### Counsel for expectant or parenting youth

- Determine how the expectant or parenting youth can maintain supportive and meaningful contact with family or other permanent adult relationships.
- Advocate for expectant and parenting youth to remain in a family-based setting where possible and based on client preferences. Consider whether:
  - all kin and fictive kin who might be open to caring for the youth and child have been explored;
  - services may stabilize a family-based placement (i.e., child care, evidence-based parent-child therapy, mentoring).
- Independently investigate whether a group setting will meet your client's needs. For example, determine:
  - how many other young people are placed there, and whether those youth are also pregnant, postpartum, or parenting;
  - what the rooming/housing situation is like;
  - whether staff are present onsite at all times.
- Evaluate how the current or proposed setting, either in family home care or a group setting, can meet your client's educational needs. Ask:
  - if the young person will receive transportation to his or her school of origin;
  - whether an educational program exists onsite. If so, will it be able to implement the youth's Individualized Education Plan, 504 plan, or other specialized supports?

### Judicial decision maker

- Probe whether the most appropriate placement for each expectant or parenting youth is a group setting with relevant supports or a family-based setting.
- Determine whether the expectant or parenting youth communicates regularly with family and can be supported by parents and other family members.
- Ask whether prevention services are available for the expectant or parenting youth in foster care and their children.

## How can the legal community support Family First implementation?

- ❑ Support your jurisdiction's efforts to recruit and retain foster family homes to serve expectant, postpartum, or parenting youth.
- ❑ Prioritize policies that support expectant and parenting youth of all genders who are in or transitioning out of foster care.<sup>45</sup>
- ❑ Determine whether your jurisdiction already has residential settings with prenatal, postpartum, or parenting supports for youth in foster care, and whether the agency accesses Title IV-E funds for these placements, in addition to any state dollars used.
- ❑ If no such settings are available in your jurisdiction, work with the child welfare agency and service providers to develop them or to develop alternatives that meet youth service needs outside a residential setting.
  - Recruit youth or individuals with relevant experience to help shape these programs.<sup>46</sup>
  - Consider whether investing more in community-based services for youth at risk of placement in settings for expectant or parenting youth could reduce the need for residential care.
- ❑ Identify what services qualify as prenatal, postpartum, or parenting supports in your jurisdiction and whether they are available to youth who live in kin caregiver homes or other family foster home settings.
- ❑ Ask youth about their experiences in residential settings serving prenatal, postpartum, or parenting youth and share that with the implementation team, after securing the youth's permission.
- ❑ Assess what impact a nonfamily placement with prenatal, postpartum, or parenting supports may have on the youth's education and school stability. How can adverse impacts be mitigated?

### Group Setting Two: Supervised Independent Living Setting for Youth Over 18

Expenses for a supervised independent living setting for youth aged 18 and over also may be reimbursable with IV-E foster care funds under Family First.<sup>47</sup> This placement type was already reimbursable with IV-E foster care funds under the Fostering Connections to Success and Increasing Adoptions Act of 2008. Fostering Connections included “a supervised setting in which an individual lives independently” as a Title IV-E reimbursable setting for youth ages 18 to 21. That option continues to be available under Family First.<sup>48</sup>

## How can the legal community use this provision to inform legal advocacy and legal decision making?

### Child welfare agency counsel

- ❑ Be prepared to provide information on the chosen setting and what resources it offers youth in this placement.
- ❑ Ensure the agency is connecting youth aged 18-21 to all available tools for youth in extended foster care, including educational and employment resources.

### Child's counsel

- ❑ Advocate for the youth to live in a supervised independent living setting or family-based setting where possible, depending on what your client prefers.
- ❑ Independently investigate whether the proposed placement will meet the youth's needs and what other services are needed to meet those needs and support the youth.
- ❑ Be creative and innovative in pursuing the best living arrangements to meet an older youth's needs for supervision and support as your client moves toward independence.
- ❑ Help your client identify permanent, significant adult connections who will be sources of support if the client ages out of foster care without reaching a final permanency goal.
- ❑ Work with your client and community service providers to make sure your client has access to stable housing upon reaching the age of foster care emancipation in your jurisdiction.
- ❑ Work with your client and other legal services providers to make sure your client has access to legal representation for collateral issues that may require assistance related to housing access, benefits eligibility, immigration status, juvenile records, and employment eligibility.

### Judicial decision maker

- ❑ Assess the placement's stability and ability to meet the individualized needs of youth.
- ❑ Engage youth during appearances to learn more about their needs, and to gauge the quality and scope of services and resources available to youth.

## How can the legal community support Family First implementation?

- ❑ Access any tools the IV-E agency has developed to

determine whether a supervised independent living setting that a youth selects is appropriate. For example, does the agency consider a substance use, mental health, or other adult treatment facility to be a supervised independent living setting if the youth is living there voluntarily, paired with IV-E agency supervision?

- ❑ Invite individuals with personal experience in foster care to share perspectives about group home experiences in a context where they have support to prepare their ideas, share them safely, and can engage in ongoing reform efforts.
- ❑ Determine how heavily your jurisdiction relies on supervised independent living settings. Join partnerships between the child welfare system and runaway and homeless youth providers working to increase the availability of independent living settings and other resources.<sup>49</sup>
- ❑ Consider the impact a nonfamily supervised independent living placement setting may have on the young person's education and school stability. How can adverse impacts be mitigated?

### Group Setting Three: Setting for Youth Who are Sex-Trafficking Victims and Those Who Are At-Risk

A placement setting for youth who are sex trafficking victims and those at risk of sex trafficking is another nonfamily placement type that remains reimbursable with IV-E funds after the initial two-week period.<sup>50</sup> (This description's use of "victims" aligns with the statutory text.) This placement was already allowed for reimbursement with IV-E funds. It continues to be an option under Family First.

### How can the legal community use this provision to inform legal advocacy and judicial decision making?

#### Child welfare agency counsel

- ❑ Determine how the group setting meets the youth's needs related to:
  - physical health (prior lack of health care, reproductive health care, etc.);
  - complex behavioral health needs (traumatic stress, posttraumatic stress disorder, generalized anxiety disorder, major depressive disorder, dissociative disorders, substance use, etc.); and
  - educational screening and any remedial services indicated.

#### Child's counsel

- ❑ Consider whether to advocate for a more family-like setting based on the youth's wishes. Ensure the prospective foster parents are prepared to serve foster youth who are survivors or are at risk of trafficking.
- ❑ Independently investigate whether the group setting provides the specialized services your client needs.
- ❑ Ensure the placement has trained, qualified behavioral health providers with experience working with youth who have been trafficked. Is there a mentor or other staff available to provide guidance and long-term assistance essential for the youth to move away from trafficking and reduce the risk of revictimization?
- ❑ Talk with your client to identify any parents or relatives who would be a safe, adult connection. Work with the caseworker to engage these individuals recommended by your client.
- ❑ Assess whether the youth has other legal needs. For example:
  - Does the youth need legal counsel related to any juvenile or criminal justice system involvement resulting from the youth's victimization?
  - Is legal counsel needed to protect the youth from traffickers?
  - Does the youth require a victim advocate?

#### Judicial decision maker

- ❑ Determine whether the young person's placement setting is equipped to address the trauma experienced by children who have been trafficked.
- ❑ Assess the opportunities for placement in tailored group care and family-based settings for youth who have experienced or are at risk of sex trafficking.
- ❑ Stay informed of the needs of youth who experience sex trafficking and emerging research on trauma-responsive treatment.<sup>51</sup>

### How can the legal community support Family First implementation?

- ❑ Determine what group placements in your jurisdiction qualify to serve survivors of sex trafficking or those at risk. Who makes that determination? What policies are in place regarding placement eligibility? Are the placements safe?
- ❑ If additional settings are needed, work with the agency and other stakeholders to develop new, high-quality spaces. In the process, determine how your

jurisdiction funds nonfamily placements for survivors of sex trafficking or those at risk, and how best to access Title IV-E funds used.

- ❑ Invite individuals with personal experience in foster care to share perspectives about group home experiences in a context where they have support to prepare their ideas, share them safely, and can engage in ongoing reform efforts.
- ❑ Consider what impact a group setting for survivors of sex trafficking or those at risk may have on the youth's education and school stability. How can harmful effects be mitigated?

## Group Setting Four: Residential Placement to Meet Therapeutic Needs

### What is a Qualified Residential Treatment Program?

A fourth nonfamily home option under Family First is a highly specialized placement called a qualified residential treatment program (QRTP).<sup>52</sup> This setting is designed to meet the therapeutic needs of children with serious emotional or behavioral disorders or disturbances. The Family First Act provides extensive detail about requirements for this placement type, assessments and treatment planning, and the approval process and timeline.

#### Setting requirements

To be considered a QRTP, a residential program must:

- ❑ follow a trauma-informed model;
- ❑ be designed to meet the needs of children with serious emotional or behavioral disorders;
- ❑ be able to implement the treatment plan for each child in its care;
- ❑ have registered/licensed nursing professionals and other licensed clinical professionals on staff on call 24 hours a day, 7 days a week;
- ❑ engage family members and kin, and maintain their contact information;
- ❑ help family members participate in a child's treatment plan (to the extent appropriate and consistent with the child's best interests);
- ❑ document how family members have participated in the child's treatment plan;
- ❑ provide discharge planning and family-based aftercare support for at least six months following discharge;

- ❑ ensure all members of its staff have received appropriate background checks (as required of all group care employees); and
- ❑ receive accreditation from one of three major independent licensing organizations for residential care—Commission on Accreditation of Rehabilitation Facilities (CARF), Joint Commission on Accreditation of Health-care Organizations (JCAHO), and Council on Accreditation (COA)—and any other independent, nonprofit accrediting organization approved by HHS, and also applicable licensure.

#### Assessments and treatment planning

The Family First Act outlines a number of assessment and treatment-related criteria that must be met before an agency can access federal Title IV-E reimbursement for the costs of a child's care in a QRTP:

- ❑ *Purpose:* The child must receive an assessment to determine the strengths and needs of the child, set short- and long-term mental and behavioral health goals, and determine the least-restrictive level of care that can meet the child's needs.
- ❑ *The Assessment Tool:* The assessment must be conducted using an age-appropriate, evidence-based, validated, functional assessment tool that the federal government has approved for this purpose.
- ❑ *Timing:* The assessment must be administered and completed within 30 days of the child's placement in a QRTP.
- ❑ *Qualified Individual:* A "qualified individual" must conduct the assessment for each child. An individual is qualified if he or she is a trained professional or licensed clinician not employed by the state or affiliated with a placement setting (although the federal government may waive this employment exclusion upon state agency request with adequate assurances of objectivity).
- ❑ *Justification:* If the qualified individual conducting the assessment determines that the child must be placed in a QRTP, the assessment must document in writing the reasons the child cannot live in a family-based setting at this time, and the reasons the specified QRTP meets the child's treatment goals and needs. **Family First explicitly notes that a lack of available foster homes is not an acceptable reason for QRTP placement.**
- ❑ *The Team:* The child welfare agency is responsible for assembling a treatment team composed of, where appropriate, the child's family and natural supports, including biological parents, siblings, fictive kin, and other positive adult sources of support in the child's life. A child who is 14 or older may choose the members of

his or her treatment team. The agency must document its efforts to build and maintain this team and solicit the team’s input.<sup>53</sup> The family and permanency team meetings must be held at a time and place convenient for family.<sup>54</sup>

### Approval process and timeline

Continuing a child’s placement in a Title IV-E funded QRTP requires court oversight and approval (see timeline below). Within 60 days of the child’s placement in the QRTP, a court must consider the placement and the assessment that recommended it to determine whether to approve the placement. This review is to be conducted by “a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or an administrative body appointed or approved by the court...”<sup>55</sup> If a court finding approving the placement is not made within 60 days, the child welfare agency loses the ability to access federal financial reimbursement for the placement.

Thus, even though a “qualified individual” using a validated assessment instrument will have recommended the child’s mental health and behavioral needs require placement in the QRTP, the court may still disapprove such a placement if, after considering evidence and argument, it finds the QRTP is not the most effective and least-restrictive placement for the child. If the court approves the placement and allows the child to remain in the QRTP, the child welfare agency must “submit evidence”<sup>56</sup> at each subsequent review and permanency hearing documenting the need for such placement and the plan to return the child to a family-based setting.

Extended stays in QRTPs require certain high-level administrative approvals by the child welfare agency. If the child is under age 13, the child’s continued stay in the QRTP requires the approval of the director of the state Title IV-E

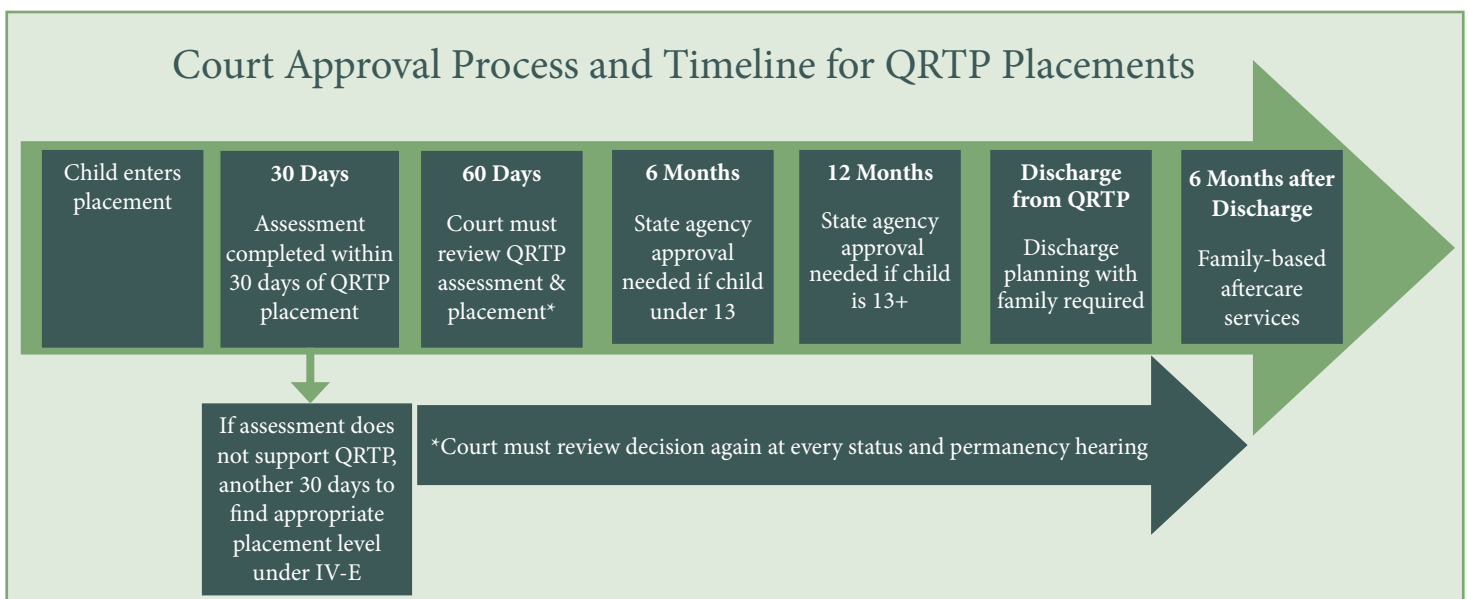
agency after six months of placement. If the child is aged 13 or over, this approval is required at the 12-month mark.

Notably, Family First also requires that QRTPs offer discharge planning and family-based aftercare support for at least six months after a youth transitions from the QRTP.

### How can the legal community use this provision to inform legal advocacy and judicial decision making?

#### Child welfare agency counsel

- ❑ Be prepared to state why the QRTP is a needed placement for this child. For example:
  - establish the credibility of the assessment;
  - determine whether the assessor will testify to explain the QRTP recommendation;
  - consider whether to call a representative from the QRTP to testify about the placement; and
  - offer evidence of the child’s diagnosis, how it differs from any prior diagnoses, and how it is consistent with the criteria laid out in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V).
- ❑ Provide the court with the qualified individual’s assessment, leaving adequate time for review before the 60-day mark.
- ❑ Ensure the court is apprised of the child’s progress after placement. Government attorneys should submit evidence in the form of court reports or other filings and be prepared to discuss the placement at every hearing.



- ❑ Explain how the child’s permanency goal can be pursued while the child is placed in a QRTP.
  - ❑ Make sure the agency has assembled a family and permanency team composed of the child’s family and natural supports, including “all appropriate biological family members,”<sup>57</sup> relatives, fictive kin, and other positive adult sources of support in the child’s life, including teachers, medical or mental health providers who have treated the child, or clergy. Prepare documentation of agency efforts to build and maintain this team and solicit the team’s input regularly.
  - ❑ Confirm the QRTP is documenting how family members are integrated into the treatment process for the child, including after the child is transitioned from that setting, and how sibling connections are maintained.
  - ❑ Prepare to explain how this placement meets the requirement to ensure a child lives in the least-restrictive setting while in foster care.
  - ❑ Prepare to explain how a child’s normalcy goals and ability to participate in activities that are culturally and socially enriching can be met while living in the QRTP.
  - ❑ Prepare to state how the child’s educational needs are being met through stable schooling and access to the school of origin if possible through transportation between the school and the QRTP.
- Teachers? Former foster parents? A social worker or clinician affiliated with your legal organization?
  - ❑ Ensure the assessment is done properly and is accurate. Consider whether:
    - the assessment was completed using an age-appropriate, evidence based, validated, functional assessment tool;
    - the assessment was conducted by an objective “qualified individual;”
    - the assessment includes diagnoses, treatment goals, and a finding of necessity of QRTP placement;
    - there is an opportunity to cross-examine the government’s witnesses to show noncompliance with legal standards or gaps in decision making;
    - the family and treatment team were consulted and included; and
    - the assessor considered collateral information such as school records, mental health or other service records, or interviews with caregivers.
  - ❑ Independently investigate the proposed placement and seek details including:
    - the nature and quality of the facilities (tour the facility if possible);
    - specific treatments or modalities the QRTP uses and whether they match the child’s needs;
    - number of youth placed in that setting;
    - setting’s rules and disciplinary procedures; and
    - staff composition and training.

## Child’s counsel

- ❑ Engage with your client to confirm the correct participants are part of the family and permanency team. If your client is 14 or older, make sure your client has had an opportunity to choose members of the treatment team.
- ❑ If your client does not want to live in a QRTP and expresses a preference for a family-based setting, advocate accordingly by seeking answers to the following questions:
  - What community-based behavioral health services would meet your client’s needs?
  - Can creative services be put in place that may stabilize a family-based placement (i.e., a one-to-one aide, crisis counseling/intervention at all times of day, housekeeping, respite care, transportation)?
  - Have all kin and fictive kin been explored?
  - Is the child receiving all needed services in school?
  - Who could testify in support of your position – a competing expert you retain? Family members?
- ❑ Consider how this placement will impact the youth’s education. Will the youth receive transportation to his or her school of origin? If no, does the QRTP setting include an educational program onsite? Will it be able to implement the youth’s Individualized Education Program, 504 plan, or other specialized supports?
- ❑ Consider how the youth can maintain supportive and meaningful contact with family or other permanent adult connections.
- ❑ Participate in treatment team meetings and monitor the youth’s progress through regular client contact and contact with case managers and therapists, as appropriate.
- ❑ Ensure the youth has provided informed consent to any prescribed medication and has been told how they may feel and what to expect while on the medication.



- ❑ Advocate for a consistent policy of requiring informed consent to medication and for an independent appeal process, if none exists.<sup>58</sup>
- ❑ Advocate for transition/discharge planning and after-care that includes supportive adult connections beyond just a permanency plan.
- ❑ Use the independent assessment that recommended the youth's placement in a QRTP as a roadmap. It includes a list of short and long-term treatment goals.
- ❑ Ask regularly: What needs to happen before discharge? How will we know when this child is ready for discharge? Advocate to modify treatment goals, if needed.
- ❑ What does the aftercare plan look like? What services are needed to ensure the child's successful transition? Remember the QRTPs themselves must support the child with aftercare services for at least six months.
- ❑ If the goal is adoption or guardianship with kin, advocate for the kin caregivers to be involved in major decisions, have ongoing meaningful contact with the child, and receive services they need to have the child in their home.

### Parent's counsel

- ❑ Advocate for opportunities for the parent to visit and spend time with the child. Discuss with other attorneys the child's access to a phone or computer to stay in touch with family and others.
- ❑ If your client would prefer the child be in a family-based setting where possible, advocate accordingly by:
  - presenting kin caregiver options if reunification is not yet possible;
  - exploring community-based services available for the child; and
  - retaining an expert for additional assessment and recommendations.
- ❑ Ensure the parent was offered the chance to be part of the treatment team assembled by the agency as an appropriate biological family member and that meetings were held at a convenient time and place. Encourage your client to take an active role in this team.
- ❑ If the child's permanency goal is reunification, ensure the parents are involved in all major decisions, have ongoing meaningful contact with the child, and receive services they need to have the child in their home. Advocate for the child's discharge planning to include support and involvement by the parent.

- ❑ Review the agency case plan and ensure required documentation, including of the reasonable and good faith effort of the agency to include all the individuals required to be on the child's family and permanency team. If QRTP placement is recommended over the objection of the youth or parent, ensure the agency explains why those preferences were not followed.

### Judicial decision maker

- ❑ Develop standard procedures to evaluate residential placements for treatment needs and hearings while a child remains in a QRTP. Determine, for example:
  - whether the qualified individual who recommended QRTP placement should testify, as a matter of practice and if that person needs to be qualified as an expert by law to provide opinion testimony.
  - whether the testimony of a provider from the QRTP setting is required at the initial or subsequent hearings as a matter of practice.
  - what additional documentation you need before deciding whether a QRTP placement is appropriate.
  - what information you will expect parties to present about ongoing QRTP placement and discharge planning.

### How can the legal community support Family First implementation?

- ❑ Join court or communitywide planning committees that address residential placements for treatment needs.
- ❑ Consider what state and local level action may be needed to comply with these Family First Act provisions. For example:
  - Will your jurisdiction require legislative or court rule amendments to conform to these federal requirements?
  - Could specific criteria for judges to consider in approving or disapproving QRTP placements be offered via statute, court rule, regulation, or other guidance?
  - Will the evidence be presented to the court via a hearing? When the placement is contested among the parties, how, if at all, will court processes differ from those where the parties are willing to stipulate to the placement?
  - Should specific procedural requirements for presenting and considering evidence in QRTP cases be enacted? Will traditional rules of evidence apply? What mechanisms are in place to ensure that



## Juvenile Justice Considerations

The Family First Act provides an opportunity for collaboration between the child welfare and juvenile justice fields. This partnership could involve state-level conversations about implementing Family First to develop procedures to monitor the impact of Family First on the juvenile justice system, ensure a robust service array for all youth, and begin critical data tracking.

### Tracking the impact on juvenile justice

Juvenile justice practitioners may be concerned that implementing the QRTP provisions will:

- ❑ result in reducing group care facilities that serve as a placement option for youth adjudicated dependent, and
- ❑ result in an increase in use of secure confinement for youth in delinquency matters.

Child welfare practitioners may be concerned that:

- ❑ reducing group care will create an incentive to arrest youth in the child welfare system who may then be placed in secure facilities.

However, Family First requires state IV-E plans to include certifications that “the State will not enact or advance policies or practices that would result in a significant increase in the population of youth in the State’s juvenile justice system.”<sup>1</sup> In addition to the requirement for the agency stated in Family First, a collaborative group of child welfare and juvenile justice practitioners should track the numbers of secure confinements and urge the agency to collect and share other relevant data, such as the number of youth involved in the child welfare and juvenile justice systems.<sup>2</sup>

### Tracking data on dually involved youth

The federal government is also required to study the impact of Family First’s IV-E funding group care restrictions on state juvenile justice systems. Though this study is not due until 2025, states should begin collecting and reviewing data to monitor the impact of Family First on youth involved with the child welfare system, the juvenile justice system, and both systems simultaneously. A collaborative implementation group can advocate for early

tracking and reporting. It can also urge state agencies to monitor racial and ethnic disparities in youth involved in the child welfare and juvenile justice systems. Though Family First does not require racial disparity data tracking, the legal community can support and advocate for incorporating racial and ethnic disparities data collection in systems review going forward.

### Youth with delinquency cases who are eligible for foster care services

Finally, a collaborative group can also seek information on youth with delinquency adjudications who are able to access services funded by Title IV-E. Youth with delinquency adjudications may be eligible for these foster care services depending on the child’s circumstances and the type of facility in which the child is placed.<sup>3</sup> Under Family First, Title IV-E funding can be used to pay for group placements for up to two weeks, which may offer a short-term option to avoid secure confinement. To qualify, “the child must be removed from the home of a relative pursuant to a voluntary placement agreement or as the result of a judicial determination that continuation in the home would be contrary to the welfare of the child and that reasonable efforts were made prior to placement to prevent the need for removal of the child from his home.”<sup>4</sup>

This funding may not be used for detention facilities or any other facilities “operated primarily for the detention of children who are determined to be delinquent.”<sup>5</sup> States using Title IV-E funding for adjudicated youth beyond two weeks must also implement the Family First requirements regarding nonfamily home placements, and transparency about any changes in level of services and availability for adjudicated youth should be encouraged.

### Sources

<sup>1</sup> Family First Act, Sec. 50741(d).

<sup>2</sup> For additional suggestions of partnering with juvenile justice advocates, see National Juvenile Justice and Delinquency Prevention Coalition, Act 4 Juvenile Justice. *Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration*, undated.

<sup>3</sup> See Administration for Children and Families, Children’s Bureau. *Child Welfare Policy Manual: 8.3A.1 Foster Care Maintenance Payments Program, Eligibility, Adjudicated Delinquents, Question 1*.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

agency evidence can be cross-examined? To ensure parties can put on contrary evidence? To ensure adequate pretrial procedure?

- ❑ Collaborate on issues affecting QRTP creation in your jurisdiction. Initial questions to answer include:
  - How does your jurisdiction fund residential placements for children? Are Title IV-E funds used, or does your jurisdiction rely on Medicaid (for psychiatric residential treatment facilities) or state dollars for these placements?
  - How heavily does your jurisdiction rely on congregate care placements? Can an increased investment in community-based services for youth at risk of placement in congregate care reduce use of these settings?
- ❑ Invite individuals with personal experience in foster care to share perspectives about group home experiences in a context where they have support to prepare their ideas, share them safely, and can engage in ongoing reform efforts.
- ❑ Understand how the assessment is developed and weigh in on practical aspects that are important to your court, as the tool requires court engagement:
  - Who will the agency consider a “qualified individual” to administer assessments? How will such indi-

viduals be retained? Will they be asked to testify in court or otherwise participate in court proceedings?

- What assessment tool will your jurisdiction use? Will it be usable by judges in addition to clinicians?
- ❑ Consider whether a judge will be able to disapprove or otherwise end a QRTP placement after hearing evidence at a later review or permanency hearing.
- ❑ Ensure a focus on children’s school stability. What impact will QRTP placement have on those areas? How can adverse impacts be mitigated?
- ❑ Support your jurisdiction’s efforts to recruit and retain foster parents to serve high-needs children.
- ❑ Support your jurisdiction’s efforts to ensure children are not inappropriately diverted to the juvenile justice system. Offer feedback on cases involving youth involved in dependency matters and delinquency or status offense matters.
- ❑ Examine racial disparities in group care placements and seek input from young people, families, kin, and community leaders about why those disparities may exist and what local efforts could help address them directly.
- ❑ Support your jurisdiction’s Court Improvement Program and others in developing trainings on QRTP provisions as required by the Family First Act.

## Group Setting



## Research to Cite

Consider citing information on:

### Needs of expectant and parenting youth

- Browne, Charlyn Harper. [\*Expectant and Parenting Youth in Foster Care: Addressing Their Developmental Needs to Promote Healthy Parent and Child Outcomes\*](#), August 2015.

Emphasizes the importance of a “two-generation approach” when seeking to meet the needs of expectant and parenting youth in foster care and their children. Also explains use of the term “expectant and parenting youth” to represent both adolescent fathers and mothers who each have roles in meeting the needs of their children.

- Dworsky, Ann & Jan DeCoursey. [\*Pregnant and Parenting Foster Youth: Their Needs, Their Experiences\*](#). Chicago: Chapin Hall at the University of Chicago, 2009.

Includes service provider reflections that pregnant and parenting youth in foster care engage in services more when supported by adult caregivers, as is often the case in group homes and kin care settings.

### Placement needs of victims of sex trafficking

- Child Welfare Information Gateway. [\*Responding to Child Victims of Human Trafficking\*](#), December 2018. Includes state laws that authorize the development of specialized housing options for minor victims of human trafficking.
- Clawson, Heather J. & Lisa Goldblatt Grace. [\*Finding a Path to Recovery: Residential Facilities for Minor Victims of Domestic Sex Trafficking\*](#). U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2007. Focuses on minors who are victimized by sex traffickers

across the United States and provides practical information about the characteristics and needs of these minors and the type of residential programs and facilities currently providing services for this population.

- › Dierkhising, C. B. et al. [\*Commercially Sexually Exploited Girls and Young Women Involved in Child Welfare and Juvenile Justice in Los Angeles County: An Exploration and Evaluation of Placement Experiences and Services Received\*](#). Los Angeles: National Center for Youth Law: California State University, 2018.

Explores the impact of specialized services and placement type on young people who have been commercially sexually exploited in Los Angeles County, including the impact of different placement types and specialized services on placement stability, and youth experiences and preferences among those placements and services.

- › Farrell, Amy et al. [\*Residential Placements for Child Trafficking Victims\*](#), 2019.

Outlines policies, practices, and programming implemented across the U.S. to provide specialized responses to exploited and trafficked youth within residential placement settings.

## Youth aged 18 and over in independent living settings

- › Child Trends. [\*Supporting Young People Transitioning from Foster Care: Findings from a National Survey\*](#), November 2017.

Explains that housing is the area most commonly reported needing improvement among older youth transition programs because “without stable housing, young people face challenges staying in school, gaining employment, accessing physical and mental health services, and reaching self-sufficiency.”

- › U.S. Government Accountability Office. [\*States with Approval to Extend Care Provide Independent Living Options for Youth up to Age 21\*](#), May 2019.

Identifies key factors states often consider when placing youth in supervised independent living settings including “the youth’s life skills—for example, their ability to budget finances and schedule medical appointments—as well as their education and employment status” and access to affordable housing in the area.

## QRTP placements and judicial review

- › Annie E. Casey Foundation, National Association of Counsel for Children, National Center for State Courts. [\*Every Kid Needs a Family\*](#) website.

Offers information and advocacy tools to assist judges, attorneys, and advocates in making decisions regarding the placement of children that reflect the least restrictive, most family-like setting possible for each child under court jurisdiction.

- › Chiamulera, Claire. “[\*Reducing Congregate Care Placements: Strategies for Judges and Attorneys\*](#).” *Child Law Practice Today*, Sept. 5, 2018.

An interview with Judge Kim Berkeley Clark of Allegheny County, PA that explains the role of judges in partnering with other child welfare stakeholders to reduce the county’s use of congregate care placements by 60% after focusing on using group settings only for children with severe mental health or substance abuse treatment needs.

- › National Center for State Courts. [\*A Judicial Toolkit for Safely Reducing Reliance on Group Home Placements for Children in the Child Welfare System\*](#), undated.

Provides judges and judicial officers guidance about how to safely reduce reliance on congregate care placements recognizing the fact that “close to half of children placed in non-family based placements do not have a documented clinical or behavioral need that would warrant such a placement.”

- › National Foster Care Youth and Alumni Policy Counsel. [\*A Historic Opportunity to Reform the Child Welfare System: Youth and Alumni Priorities on Quality Residential Services\*](#), February 2020.

Elevates the policy priorities of youth with lived experience in foster care in shaping residential treatment settings such as Qualified Residential Treatment Programs.

## Elements of effective specialized residential treatment

- › Casey Family Programs. [\*Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study\*](#), 2005.

This seminal study of long-term foster care outcomes found foster care alumni experience mental health, educational, and employment challenges at significantly higher rates than the general population. Among other findings, the report suggests more effective access to mental health supports while in care, including counseling and nonmedication interventions, as well as greater training for foster parents on youth mental health needs, would produce greater stability and fewer placement disruptions for youth who experience foster care.

- › Magellan Health Services Children’s Health Services Task Force. [\*Perspectives on Residential and Community-Based Treatment for Youth and Families\*](#), 2008.

Explains that treatment facilities with more successful outcomes share common factors of family involvement, discharge planning, and community involvement and resources, and evidence exists that most gains in residential treatment are made in the first six months.

### **Inappropriate diagnoses of mental illness**

- › Fernandes-Alcantara, Adrienne L., Sarah W. Caldwell & Emilie Stoltzfus. [\*Child Welfare: Oversight of Psychotropic Medication for Children in Foster Care\*](#). Washington, DC: Congressional Research Service, February 17, 2017.

Notes statistical findings that 48.2% of all children in group settings have been prescribed psychotropic medication within six months of foster care entry and 11.8% to 19.5% of children in foster family home settings are prescribed psychotropic medication. This report cites a “paucity of psychosocial services available” as a leading cause of overprescription of psychotropic medication for children in foster care.

- › Solchany, JoAnne. [\*Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges\*](#). Washington, DC: ABA Center on Children and the Law, 2011.

Examines reasons why children in foster care have a higher rate of misdiagnosis and over-prescription of psychotropic medications and explaining example protocols that public agencies and the child welfare legal field can put in place to address these risks.

- › U.S. Department of Health and Human Services, Administration for Children and Families. **Information Memorandum**, [\*Promoting the Safe, Appropriate, and Effective Use of Psychotropic Medication for Children in Foster Care\*](#), April 11, 2012.

Provides federal guidance on state oversight requirements through state plans and monitoring and explaining that “Practices that may be of concern include instances where children are prescribed too many psychotropic medications, too much medication, or at too young an age: too many, and too much, too young.”

### **Educational stability and school of origin access**

- › Legal Center for Foster Care and Education. [“How to Ensure Educational Success for Dependent Youth in Congregate Care.”](#) *Child Law Practice* 33, November 2014.

Explains that “for many children living in congregate care settings, a school in the community is the most appropriate education setting” because it “reduces stigma, gives the youth access to a full range of educational opportunities, and is often the least-restrictive environment for a youth with special education needs. Public schools are also more likely to have aligned curricula and to recognize credits from other public schools. This allows for smoother school transitions for these highly mobile youth.”

### **Ensuring group settings meet the “reasonable and prudent parent” standard**

- › Epstein, Heidi Redlich & Anne Marie Lancour. [“The Reasonable and Prudent Parent Standard.”](#) *Child Law Practice* 35, October 2016.

Explains that under federal law a “caregiver” must be appointed to apply the reasonable and prudent standard for children who reside in congregate or institutional care and the child welfare agency must provide the court with information that the reasonable and prudent parent standard is being followed.

### **Statutes and caselaw supporting the most appropriate placement for an older youth**

- › Juvenile Law Center. [Transition to Adulthood Litigation Resources](#) (web page).

Shares resources for attorneys representing older youth in child welfare matters who are interested in sharing, learning, and brainstorming legal strategies for improving service delivery, policies, and outcomes for older youth. This page contains summaries of cases relevant case law, federal laws related to older youth, and a list of resources.

## a. Reunification services for the family

**What does this provision do?**

The Family First Act expands the period when a family can receive reunification services available under Title IV-B, a smaller, but important source of child welfare funding.<sup>59</sup> Previously, a family would be eligible for federally supported reunification services for only 15 months total, beginning on the date when a child entered foster care. Now, a family is eligible for federally supported reunification services during the full period a child lives in foster care and for up to 15 months after the child has reunified with family.

The Title IV-B Family Reunification Services section describes the services that should be provided to a child and family when the child has been removed from the home “to facilitate the reunification of the child safely and appropriately within a timely fashion and to ensure the strength and stability of the reunification.”<sup>60</sup> These services may include counseling, substance use treatment, assistance to address domestic violence, peer mentoring, visitation, and transportation.<sup>61</sup>

**Why was this provision included?**

This Family First Act provision recognizes the value of planning for safe reunification between children and parents and providing continued support after the child returns home. Providing states improved access to federal funds for reunification services aligns with the federal Children's Bureau's renewed focus on reasonable efforts to achieve permanency requirements. Families should be provided all needed assistance to ensure the safe reunification of the child. (See reasonable efforts resources in *Research to Cite: Reunification Services for the Family*.)

**How does this provision work?**

Family First expands the Family Reunification Services section by:

- ❑ Expanding the period of eligibility for reunification services that can begin as soon as a child enters foster care and can continue for up to 15 months after a child has reunified with family. This change allows an agency to reunify a child and parent as soon as it is safe to do so and support the family with valuable assistance for a longer period.
- ❑ Reflecting this important change in timing by retitling the section of IV-B to “Family Reunification Services” rather than “Time-Limited Family Reunification Services.”

**How can the legal community use this provision to inform legal advocacy and judicial decision making?****Child welfare agency counsel**

- ❑ As with all services, ensure the agency is providing reunification services tailored to the needs of the family. Not all families need the same assistance.
- ❑ Ensure reunification services begin promptly, continue during the child's time in foster care, and extend for up to 15 months after reunification is achieved.

**Parent's or child's counsel**

- ❑ For families that would benefit from 15 months of post-reunification services, advocate with the agency and court, as necessary, for the family to receive the support, whether before or after reunification.
- ❑ Work with your clients to encourage use of services and to address access barriers. Incorporate social worker and peer advocate members of a multidisciplinary legal team where those resources exist to help access services.
- ❑ In cases in which the child can safely return, but the agency is waiting to see if “something changes,” emphasize that service providers will be working with the family to support them through any unforeseen situations.
- ❑ When necessary, argue to the court that by not providing a reunified child with appropriate services, the agency is not making mandated reasonable efforts to achieve permanency.

**Judicial decision maker**

- ❑ Determine whether reunification services are being provided, especially services related to substance use treatment, counseling, domestic violence, peer mentoring, visitation, and transportation. If services are not being accessed, seek information about barriers to those services.
- ❑ Make clear that parties need not wait until the next scheduled hearing for a child to return home if safety risks have been addressed. Indicate whether a motion for an accelerated hearing is needed for reunification to occur or if no notice to the court is required.

## How can the legal community support Family First implementation?

- ❑ Learn how your state or tribe allocates its IV-B resources.
- ❑ Consider with other stakeholders what opportunities exist to use IV-B resources to expand or complement existing Family Reunification Services.

- ❑ Ensure appropriate Family Reunification Services are available to families throughout your state or tribe, not only in resource-rich urban areas.
- ❑ Determine how your agency provides reasonable efforts to return children to their homes in every case. Further identify how it provides supportive reunification services for as long as necessary for the child to safely transition back into the home so the family remains stable and the child is not at risk of reentering foster care.

### Reunification Services for the Family



## Research to Cite

Consider citing information on:

### Reasonable efforts to reunify

- › Edwards, Judge Leonard. “[Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.](#)” *ABA Child Law Practice*, January 29, 2019.  
Explains that it is not enough to make service referrals and note them in a case plan. Instead, “judges should discuss the availability and effectiveness of services provided by service providers contracted by the agency,” and “frontline social workers should accurately assess family needs and report those needs to the court. Those needs should form the foundation of the case plan.”
- › Quality Improvement Center Collaborative Community Court Teams and ABA Center on Children and the Law. [Reasonable and Active Efforts, and Substance Use Disorders: A Toolkit for Professionals Working with Families in or at Risk of Entering the Child Welfare System](#), undated.  
Addresses some of the challenges presented in making reasonable and active efforts and related judicial findings in cases involving substance use. The toolkit provides definitions, statutory requirements, examples of reasonable and active efforts, and a resource guide for further reading.
- › U.S. Department of Health and Human Services, Administration on Children, Youth and Families. [ACYF-CB-IM-20-06, Foster Care as a Support to Families](#), April 29, 2020.  
Provides examples of how agencies and courts can provide meaningful efforts to reunify children and parents and safely maintain that reunification, including using resources families as an ongoing support.

### The relationship between meaningful parent-child contact during a child’s foster care placement and reunification

- › Laver, Mimi. “[Family Time/Visitation: Road to Safe Reunification.](#)” *Child Law Practice Today*, March/April 2017.  
Highlights visitation or family time practices that can improve the experience and outcomes for children and families.
- › U.S. Department of Health and Human Services, Administration on Children, Youth and Families. [ACYF-CB-IM-20-02, Family Time and Visitation for Children and Youth in Out-of-Home Care](#), February 5, 2020.  
Encourages a transition in the field from viewing child and family contacts while in foster care “less as ‘visits’ and more as ‘family time’” to underscore “the critical importance of the length and quality of time that children spend with their parents, separated siblings, and other important family members.”
- › White, Maryellen, Eric Albers & Christine Bitonti. “[Factors in Length of Foster Care: Worker Activities and Parent-Child Visitation.](#)” *Journal of Sociology & Social Welfare* 23, 1996, 75.  
Finds reduced time to reunification is connected not only to more frequent parent-child visitation, but also to increased social worker contact with parents, which increases the frequency of the parent’s visitation.

### Use of Title IV-B funding

- › Child Trends. [Title IV-B Spending by Child Welfare Agencies](#), December 2018.  
Provides a background on the Title IV-B spending options and an overview of state agency IV-B spending from 2006 to 2016.

## b. Older youth supports

### What do these provisions do?

The Family First Act makes several improvements to the John H. Chafee Foster Care Independence Program that benefit older youth and young adults who have experienced foster care, including extending the age of eligibility.<sup>62</sup> The Act also renames the program the John H. Chafee Foster Care Program for Successful Transition to Adulthood, reflecting an emphasis on effectively preparing youth for adulthood and life beyond foster care. Family First further addresses a documentation challenge that youth exiting foster care often face when trying to access services.<sup>63</sup>

### Why were these provisions included?

The Chafee program provides flexible funding to states and tribes to design and implement various transitional programs for the benefit of older youth and young adults who have experienced foster care. (The Family First Act does not provide additional funding for the Chafee program, though it does permit states and tribes to seek undistributed Chafee funds from the previous year.) These programs may include assistance obtaining a high-school diploma or postsecondary degree, career services, job training, and life skills supports.<sup>64</sup> Recognizing that older youth and young adults require comprehensive, ongoing support beginning in their teenage years through adulthood, the Family First Act makes several improvements to current Chafee provisions. Additionally, it expands the vital documents that must be provided to youth and young adults exiting care so they can more easily access services and prepare for adulthood.

### How do these provisions work?

#### Expands the age of eligibility

Previously, Chafee-funded programs were only available to former foster youth between ages 18 and 21. Under the Family First Act, the age of eligibility begins at age 14 and extends to age 23 in states and tribes that have opted to receive federal reimbursement to extend foster care to age 21, as permissible under the Fostering Connections to Success and Increasing Adoptions Act. Additionally, states and tribes that HHS determines provide comparable state-funded supports and services to youth who have aged out up to the maximum state or tribal age of 21 may also extend Chafee services to age 23. This Family First expansion of the group of youth eligible for Chafee-funded services reflects a priority of the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Strengthening Families Act), which requires that youth engagement in transition planning begin at age 14, rather than the previous start age of 16.<sup>65</sup> Together, these laws reflect an understanding of the need

for targeted and youth-centered planning and support and services for the transition from foster care to adulthood.

The Education Training Voucher (ETV) program is designed to support youth in foster care, youth who were adopted or entered kinship guardianship from foster care after turning 16, and youth who aged out of foster care.<sup>66</sup> Youth may be eligible to receive up to \$5,000 per year to support the cost of attending a postsecondary education or vocational training program. Before Family First, youth were only eligible for ETVs between ages 16 and 23. Now, states and tribes may provide youth who are at least 14 years old access to these vouchers up to age 26. However, youth are not eligible for these vouchers for more than five years total. The value of these vouchers varies from state to state but cannot exceed \$5,000 per year.

#### Requires access to records and documents

In addition to improving opportunities within the Chafee program, the Family First Act builds on other existing supports for older youth and young adults. The Strengthening Families Act required states to provide youth who exit care at age 18 or older certain vital documents, such as social security cards and birth certificates.<sup>67</sup> Now, under Family First, youth exiting care must also be provided documentation that they were in foster care, which will help them access benefits and services including health care coverage under the Affordable Care Act.

### How can the legal community use these provisions to inform legal advocacy and judicial decision making?

#### Child welfare agency counsel

- ❑ Ensure agency staff inform youth who are exiting foster care of documents they should have before they exit care and provide those documents.
- ❑ Ensure youth begin youth-centered transition planning at age 14 and are aware of all available services and supports, including those through the Chafee and ETV programs.

#### Child's counsel

- ❑ Inform clients about services, programs, and benefits for which they might be eligible and assist the youth or young adult to enroll in and receive all available supports.
- ❑ Advocate for a case plan individualized to the youth's needs and that includes active and meaningful engagement of the youth in developing the plan.



- ❑ Ensure clients receive the necessary documentation upon exiting foster care.
- ❑ Although Family First does not change current transition planning requirements, the improvements to Chafee under the Act make it more important than ever for attorneys to advocate in court for robust, comprehensive, and youth-centered transition services and planning starting at age 14.

### Judicial decision maker

- ❑ Meaningfully engage youth in legal hearings to learn what Chafee and other program services they are being offered, what other resources they want, their interests, and their plans for the future. Enter relevant orders to help youth achieve those goals.
- ❑ Ensure that youth-centered transition planning begins at age 14 and that youth exiting foster care have all necessary documents.

### How can the legal community support Family First implementation?

- ❑ Partner with youth in implementing the older youth provisions of the law and ensure meaningful youth engagement in system reform.

- ❑ If your state or tribe currently offers state or federally funded extended foster care, advocate extending Chafee services up to age 23.
- ❑ Advocate for the state or tribe to extend eligibility for ETVs up to age 26 and ensure the limitations on duration are understood by youth, legal professionals, and program services professionals.
- ❑ Seek support for extending age eligibility by sharing research on brain and developmental science and supporting data.<sup>68</sup>
- ❑ Join discussions in your jurisdiction about older youth and young adults in foster care and ensure courts know about potential changes in eligibility at the state level.
- ❑ Continue to support youth engagement in court cases and case planning, including creating a youth-centered system.
- ❑ Use these provisions to reemphasize other federal requirements on supporting youth in their transition to adulthood and ongoing permanency.



## Research to Cite

Consider citing information on:

### Needs of youth aging out of foster care

- › Altschuler, David et al. [Supporting Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice](#). Washington, DC: Center for Juvenile Justice Reform, 2009.

Provides recommendations to improve outcomes for transition-age youth involved in the child welfare system, juvenile justice system, or both.

- › Courtney, Mark et al. [Planning a Next-Generation Evaluation Agenda for the John H. Chafee Foster Care Independence Program](#), OPRE Report #2017-96. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2017.

Identifies key components of the transition from foster care to adulthood and a typology that classifies independent living services into 10 service categories to inform effective planning for relevant programs.

- › Peters, Clark M. et al. [Extending Foster Care to Age 21: Weighing the Costs to Government against the Benefits to Youth](#). Chicago: Chapin Hall at the University of Chicago, 2009.

Estimates the costs and benefits of extending the availability of foster care placement for youth aged 18-21, and concluding that the potential benefits to foster youth and society will more than offset the costs to government.

### Adolescent brain science developments

- › ABA Center on Children and the Law, Youth Engagement Project. [Adolescent Brain Toolkit](#), 2019.

Provides a collection of resources that offer opportunities for child welfare legal professionals to learn about adolescent brain science, incorporate it into individual practice and systemic reform, and create a more supportive environment for young people experiencing foster care.

- › Annie E. Casey Foundation. [The Road to Adulthood: Aligning Child Welfare Practice with Adolescent Brain Development](#), 2018.

Offers recommendations for child welfare professionals, caregivers, and systems to use adolescent brain research

to work effectively with youth in or emerging from foster care.

- › Jensen, F. E. & A. E. Nutt. [The Teenage Brain: A Neuroscientist's Survival Guide to Raising Adolescents and Young Adults](#). New York, NY: HarperCollins Publisher, 2015.

Provides a detailed description of adolescent brain science for parents and caregivers, and connecting brain development to the effects of adolescents' experiences of learning, risk-taking, substance use, stress, and other areas.

- › Steinberg, L. [Age of Opportunity: Lessons from the New Science of Adolescence](#). New York, NY: First Mariner Books, 2014.

Offers information about adolescent brain science, including the areas that are most active and undergoing the most change, with the goal of informing the national conversation about how to improve the well-being of adolescents.

- › National Academies of Sciences, Engineering, and Medicine. 2019. [The Promise of Adolescence: Realizing Opportunity for All Youth](#). Washington, DC: The National Academies Press, 2019.

Examines the neurobiological and socio-behavioral science of adolescent development and outlining how this knowledge can be used to promote adolescent well-being, resilience, and development, and rectify structural barriers and inequalities in opportunity, helping all adolescents flourish.

### Whether your state accesses the full federal funding available for Chafee programs

- › Congressional Research Service. [Youth Transitioning from Foster Care: Background and Federal Programs](#), Appendix A, May 2019.

Provides a table of Chafee General program and Educational Training Voucher program funding for states, the District of Columbia, Puerto Rico, and select tribes in FY 2018 and FY 2019.

### Other federal laws supporting older youth in foster care and those transitioning to adulthood

- › ABA Center on Children and the Law. [Quick Guide: Federal Laws Supporting Youth in Foster Care Transitioning to Adulthood](#), 2019.

Provides an overview of federal laws designed to support the needs of older youth in foster care and those transitioning to adulthood.

## What do these provisions do?

The Family First Act provides additional direction to the child welfare community in several areas, discussed below.

## Why were these provisions included?

These assorted provisions support the Act's overarching goals of ensuring the safety of children with their families and in foster care and strengthening family home-based support.

## How do these provisions work?

Some provisions directly affect courts and legal professionals:

- ❑ The Family First Act reauthorized the **Court Improvement Program (CIP) grants**.<sup>69</sup> Since 1993, the federal government has provided CIP funding to the highest court in each jurisdiction with the goals of improving the legal processes in the child welfare system, improving outcomes for children and families, and enhancing collaboration between courts, child welfare agencies, and tribes.<sup>70</sup> Under Family First, CIPs must also “provide for the training of judges, attorneys, and other legal personnel in child welfare cases on Federal child welfare policies and payment limitations with respect to children in foster care who are placed in settings that are not a foster family home.”<sup>71</sup>

CIPs have begun planning and offering these trainings on nonfamily home placement, the related IV-E reimbursement requirements, and other Family First provisions, often in partnership with the state child welfare agency.

- ❑ The Family First Act reauthorized the **Regional Partnership Grant (RPG) Program**, a Title IV-B resource offered to states and tribes to improve the well-being of children and families affected by a parent or guardian's substance use disorder.<sup>72</sup> These funds continue to support interagency collaborations and service coordination, but Family First amended certain elements, including the overall goals, application process, team composition, and grant distribution. Representatives from the juvenile court or Administrative Office of the Court remain required partners for partnership grants serving children in out-of-home care.

Other provisions direct state Title IV-E agencies to:

- ❑ Improve interstate placements by creating a centralized **electronic interstate case processing system** by October 1, 2027.<sup>73</sup> The Family First Act authorizes \$5 million

of IV-B funding to develop a system for exchanging data and documents to speed placement of children across state lines for foster care, adoption, or guardianship arrangements.

- ❑ Document in their IV-B Child Welfare Services program plan a **statewide plan to prevent child abuse and neglect fatalities**.<sup>74</sup> The plan must include information on how the comprehensive, statewide plan engages public and private agency partners, including those in public health, law enforcement, and the courts.
- ❑ Comply with **data and reporting requirements** for state and tribal IV-E agencies, primarily regarding children placed in nonfoster family home settings.<sup>75</sup> The U.S. Department of Health and Human Services must also submit a number of written reports to Congress.<sup>76</sup>

Several provisions benefit and support children in temporary out-of-home care, guardianship arrangements, and adoptive families.

- ❑ As part of its emphasis on the value of family-based foster homes when children must be removed from their parents, Family First provides **added supports for foster families**. Community-based services designed to support and retain foster families can now be offered as part of Title IV-B's Family Support Services, in addition to the services for the child's family.<sup>77</sup> Additionally, \$8 million in competitive grants are available through FY2022 for states and tribes to support the **recruitment and retention of high-quality foster families**.<sup>78</sup> These grants target jurisdictions with the highest percentages of children in nonfoster family settings.
- ❑ Family First also **reauthorizes the Adoption and Legal Guardianship Incentive Program** (through FY2021), which provides states with award payments based on increased exits of children from foster care to adoption or guardianship.<sup>79</sup>
- ❑ The Family First Act section on “**ensuring states reinvest savings resulting from increases in adoption assistance**” delays the increased federal adoption assistance reimbursement for some children under age two until July 1, 2024.<sup>80</sup> Immediately before enactment of Family First, financial assistance was available for the adoption of children with special needs over age two regardless of the child's eligibility for AFDC (pre-TANF cash assistance). Under Family First, that group will expand to include children with special needs<sup>81</sup> of any age on July 1, 2024.

## How can legal advocates support implementation?

- ❑ Participate in Family First trainings organized by your state Court Improvement Program (CIP), and help develop future trainings on areas of interest, such as promising practices, challenges, or inconsistent practice across local jurisdictions.
- ❑ Implementing Family First also provides an opportunity for practitioners and advocates focused on child welfare, juvenile justice, runaway and homeless youth, and other areas to engage in cross-training and collaboration.
- ❑ Become (or remain) active in statewide or local CIP-led system improvement efforts.
- ❑ Determine whether your jurisdiction's Regional Partnership Grant includes required partners, such as juvenile court representatives, and ensure the needs of children and families affected by heroin, opioid, and other substances are being addressed.
- ❑ Monitor development of the electronic statewide system and increased timeliness of placements across state lines. Improve policy and practice on the interstate placement of children that is consistent with—but does not exceed—the requirements of the Interstate Compact on the Placement of Children (ICPC).<sup>82</sup>
  - Advocate for faster processing of ICPC cases at the individual case level.

## Conclusion

The Family First Act creates opportunities for attorneys and judicial decision makers to improve the child welfare system. Soon after this law passed in 2018, legal professionals recognized the importance of understanding what those opportunities are and how to adapt legal practice accordingly to the benefit of children and families. The legal community also clearly expressed an interest in tools that explained what changes to child welfare practice Family First makes, both broadly and in a legal setting.

In response, this legal guide is designed to help attorneys, judges, magistrates, and court personnel understand how Family First amends federal law and common legal practice and recognize options for tailoring it to advance legal advocacy and judicial decision making. In addition to using the specific provisions within this law, one of our main goals is for the legal community to use this tool to understand the purpose behind each provision.

Understanding the “why” behind Family First helps ensure implementation efforts throughout the country focus on incorporating the specifics of the law into legal practice and on achieving end goals of the Act—goals like reducing entries into foster care, providing more expansive services for parents, supporting kin caregivers, ensuring children can live in a family setting, facilitating safe reunification, and supporting older youth transitioning from foster care.

This legal guide offers a starting point for understanding the Family First Act and how it can inform and improve legal practice and judicial decision making. The ABA Center on Children and the Law also offers tailored trainings and facilitated jurisdiction-based conversations about implementing Family First at the local level, for legal professionals to hold in collaboration with child welfare agencies. To learn more, contact Cristina Cooper, [cristina.cooper@americanbar.org](mailto:cristina.cooper@americanbar.org).



Timeline of Effective Dates of Family First Act Provisions<sup>1</sup>

February 9, 2018

- › Family First Prevention Services Act is enacted.
- › Changes to the renamed John H. Chafee Foster Care Program for Successful Transition to Adulthood, including the option for states to extend age of eligibility for Chafee-funded programs and Education Training Vouchers, are effective.
- › Requirement that states provide youth exiting foster care with documentation that they were in foster care is effective.
- › Court Improvement Program (CIP) grants are reauthorized through FY2021, and the requirement is added for CIPs to provide training for judges, attorneys, and other legal personnel in child welfare cases on nonfamily foster settings.
- › Adoption and Legal Guardianship Incentive Program is reauthorized for an additional five years (through FY2021), as if enacted on October 1, 2017.

October 1, 2018

- › Opportunity becomes available for states to seek federal reimbursement for costs of placing with a parent in a family-based substance use treatment setting.
- › Changes to former time limits for reunification services funded by Title IV-B become effective.
- › States may access Title IV-E funds for kinship navigator programs.
- › Regional Partnership Grant Program is reauthorized.
- › The U.S. Department of Health and Human Services (HHS) can provide states funding to develop electronic interstate case-processing systems.

April 1, 2019

- › Deadline for states to share with HHS how their foster family home licensing standards align with the HHS model standards.

October 1, 2019

- › States and tribes may begin accessing federal funds for prevention services starting on this date. States and tribes can also choose to delay implementation for up to two years (October 1, 2021).
- › Provisions regarding nonfamily foster care settings (such as Qualified Residential Treatment Programs) become effective. States and tribes have the option to delay implementation by up to two years, until October 1, 2021. States electing to delay implementation in this area may not access Title IV-E reimbursement for prevention services until the nonfamily placement restrictions take effect.<sup>2</sup>

<sup>1</sup> This timeline reflects effective dates for Family First Act provisions that are highlighted in this legal guide. For the effective dates of other Family First provisions, see Children’s Defense Fund and Partners, *Implementing the Family First Prevention Services Act Q&A Tool*, 2020, Sec. 10.A.

<sup>2</sup> See Family First Act, Sec. 50746(b).

## State Definitions of “Candidate for Foster Care” for Prevention Services

“Candidates for foster care” who are at imminent risk of removal from their homes are one of the groups eligible for prevention services under the Family First Act. The Children’s Bureau has not provided a detailed definition of that term, allowing states and tribes to determine under what circumstances children may be eligible. This is not the first use of the term in federal child welfare guidance. Before Family First, state child welfare agencies were able to access federal funds for administrative costs related to children “at imminent risk of removal” from their home, including costs related to making reasonable efforts to prevent the need for removal or pursuing removal.<sup>1</sup> Guidance in the Children’s Bureau’s Child Welfare Practice Manual refers to these children as “candidates” for foster care.<sup>2</sup>

Before the Family First Act was enacted, at least five states included the term “candidate for foster care” in administrative codes. (Several other states included definitions in agency policy manuals that echo these legal definitions, but those are not included in the table below.) These definitions largely served to identify the circumstances that allowed state agencies to recoup administrative expenses from the federal government. States now have opportunities to adapt existing definitions or—like states without preexisting legal references to the term—create new references to “candidate for foster care” to define the population eligible for federally-funded prevention services. Several states have done so already. Table 1 below highlights selected “candidate for foster care” references before and since enactment of Family First.

Other states can draw from these statutory and administrative examples that followed enactment of Family First. Several mirror the Family First language and reflect the types of services available. Others provide additional information. State teams developing prevention programs can also review more detailed descriptions of “candidacy” included in Family First prevention program plans that state agencies have drafted or submitted for Children’s Bureau approval.<sup>3</sup>

These plans include much more detail about how states intend to meet the needs of families in their jurisdictions. For example, a state may prioritize prevention services for families with substance-exposed newborns and parents, children and youth of a certain age, children and youth currently involved in the juvenile justice system, families at risk of adoption or guardianship disruptions, or recently reunified families.

Table 1. State Use of “Candidate for Foster Care”

Colorado	
<b>Before Family First Enactment</b>	Child at risk of imminent placement out of the home, whether through a voluntary placement agreement or court-ordered custody with the child welfare agency. A determination must be made as to whether the child is at imminent risk of removal from the home no less frequently than every six (6) months, and reasonable efforts shall be made to prevent the removal of the child from the home. 12 Colo. Admin. Code § 2509-7:7.601(L).
<b>After Family First Enactment</b>	Authorizes establishing and implementing a foster care prevention services program for families with children and youth who are candidates for foster care but who can safely remain at home or in a kinship placement with services, including children and youth who, without intervention, risk involvement with the child welfare system. Colo. Rev. Stat. § 26-5.4-103.
Hawaii	
<b>Before Family First Enactment</b>	Child at imminent risk of removal from the home if reasonable efforts are being made to prevent the need for, or if necessary, to pursue, removal of the child from the home. The child welfare agency must make, not less often than every six months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home. Haw. Admin. Rules § 17-617-23.
Kentucky	
<b>After Family First Enactment</b>	Refers to the federal Family First Act definition of “candidate for foster care” codified at 42 U.S.C. § 675(13). 922 Ky. Admin. Reg. 1:565 § 1(6).

Table 1. State Use of “Candidate for Foster Care”

<b>Mississippi</b>	
<b>Before Family First Enactment</b>	Refers to federal Child Welfare Policy Manual definition and adds, “If a child is in an open protection service case in which at least one child in the family is at serious risk of removal from home and services are being provided to prevent placement as documented in the Family Service Plan (FSP), the child is considered a candidate for foster care.” Miss. Admin. Code Pt. 6, CII(B).
<b>New Mexico</b>	
<b>Before Family First Enactment</b>	<p>A foster care candidate is a child at serious risk of removal from home where the agency is either pursuing the child's removal from the home or making reasonable efforts to prevent the child's removal from the home.</p> <p>A child may be considered a foster care candidate when a child is determined to be conditionally safe and the risk of maltreatment is moderate or high, or when a child is determined to be unsafe.</p> <p>A child may be determined to be a foster care candidate at any point during the in-home services case when there has been a change in a family’s circumstances that affects the safety of a child. Foster care candidacy must be redetermined for the child every six months. N.M. Admin. Code §§ 8.10.6.7(O), 8.10.6.10</p>
<b>Utah</b>	
<b>After Family First Enactment</b>	<p>Defines a “prevention candidate” as a child under age 18 when at serious risk of entering or reentering foster care, but able to remain safely in the home or kinship placement as long as mental health, substance use disorder, or in-home parent skill-based programs or services for the child, parent, or kin caregiver are provided. A child may be at serious risk of entering foster care based on circumstances and characteristics of the family as a whole and/or circumstances and characteristics of individual parents, children, or kinship caregiver that may affect the parents’ ability to safely care for and nurture their children. Utah Admin. Code § R512-100-2(5).</p> <p>The Administrative Code further clarifies what assessments may be used to determine the eligibility of a child or family for prevention services and when services may be provided. Utah Admin. Code § R512-100-5(4)-(5).</p>
<b>Virginia</b>	
<b>Before Family First Enactment</b>	Child at imminent risk of entry into foster care. Virginia Admin. Code § 40-201-20(F).
<b>Washington</b>	
<b>After Family First Enactment</b>	<p>Defines “child who is a candidate for foster care” to be one who the agency identifies as being at imminent risk of entering foster care but who can remain safely in the child's home or in a kinship placement as long as services or programs needed to prevent entry of the child into foster care are provided, and includes but is not limited to a child whose adoption or guardianship arrangement is at risk of disrupting or dissolving that would result in a foster care placement.</p> <p>Specifies that this definition include a child for whom there is reasonable cause to believe the child has been abandoned by the parent; the child has been abused or neglected; there is no parent capable of meeting the child's needs; or the child is otherwise at imminent risk of harm. Wash. Rev. Code §§ 74.13.020(5); 26.44.020(6).</p>

<sup>1</sup> 42 U.S.C. § 672(i)(2).

<sup>2</sup> Administration for Children & Families, Children’s Bureau. Child Welfare Policy Manual: 8.1D Candidates for Title IV-E foster care..

<sup>3</sup> See Chapin Hall & Casey Family Programs. Family First Prevention Services Act: Candidacy by Jurisdiction, 2020; See also [a list](#) of states that have submitted a IV-E Prevention Program Five-Year Plan for Children’s Bureau approval.

## Key Federal Laws to Incorporate into Advocacy

In your advocacy or judicial decision making, consider including relevant federal law that complements Family First, in addition to state law and policy. These statutory provisions have been amended over time by federal child welfare laws that include the Adoption Assistance and Child Welfare Act of 1980, Adoption and Safe Families Act of 1997, Fostering Connections to Success and Increasing Adoption Act of 2008, Preventing Sex Trafficking and Strengthening Families Act of 2014, and the Every Student Succeeds Act of 2015.



## Prevention Services

42 U.S.C. § 671	(a)(15) Requires child welfare agencies to make reasonable efforts to preserve families and prevent removal, unless certain exceptions apply. See also 45 CFR 1356.21(1).  (e) Explains requirement for states to receive 50% federal funding reimbursement.
42 U.S.C. § 672	(a)(2)(A) Foster care placement requires either a voluntary placement agreement entered into by the child's parent or legal guardian or a judicial determination that child's continuation in the home would be "contrary to the welfare of the child" and "reasonable efforts" to prevent removal have been made by the child welfare agency as required by 42 U.S.C. § 671(a)(15).
42 U.S.C. § 675	(13) Defines the term "candidate for foster care" generally as a child 'identified in a prevention plan ... as being at imminent risk of entering foster care...but who can remain safely in the child's home or in kinship placement as long as services...necessary to prevent the entry of the child into foster care are provided.



## Co-Placement with Parent

42 U.S.C. § 671	(a)(15) Requires child welfare agencies to make reasonable efforts to preserve families and prevent removal, unless certain exceptions apply. If the child has been removed, also requires reasonable efforts to make it possible for a child to safely return to the child's home.
42 U.S.C. § 672	(a)(2)(A) Foster care placement requires either a voluntary placement agreement entered into by the child's parent or legal guardian or a judicial determination that the child's continuation in the home would be "contrary to the welfare of the child" and "reasonable efforts" to prevent removal have been made by the child welfare agency as required by 42 U.S.C. § 671(a)(15).
42 U.S.C. § 675	(1) Defines the term "case plan" to include inter alia a description of safety and appropriateness of the placement, a plan for assuring proper services to the child, parents and foster parents, and health and education records of the child.  (5)(A) Requires that a child be placed in the least restrictive, most family-like setting available while in foster care.  (5)(E) Codifying requirement of the Adoption and Safe Families Act (ASFA) (P.L. 105-89). Provides that if a child is in foster care for 15 out of 22 months the agency is expected to seek termination of parental rights (TPR) unless there are compelling reasons not to do so, the child is living with a relative, or the agency has failed to provide reasonable efforts in support of reunification.





## Foster Family Setting

42 U.S.C. § 671	<p>(a)(19) Prioritizes a child’s placement with a relative.</p> <p>(a)(24) Requires that the child’s foster family home follow the reasonable and prudent parent standard, as defined at 42 U.S.C. § 675(10) (colloquially known as the “normalcy” provision).</p> <p>(29) Requires state agencies to exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of a child who has entered foster care.</p>
42 U.S.C. § 675	<p>(5)(A) Requires that a child be placed in the least restrictive, most family-like setting available while in foster care.</p> <p>(10) Defines “reasonable and prudent parent standard” to be the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the child’s emotional and developmental growth, that a foster parent shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.</p>



## Group Setting

42 U.S.C. § 671	(a)(10) Requires that a child’s group care setting follow the reasonable and prudent parent standard, as defined at 42 U.S.C. § 675(10) (colloquially known as the “normalcy” provision).
42 U.S.C. § 675	<p>(5)(A) Requires that a child be placed in the least restrictive, most family-like setting available while in foster care.</p> <p>(10) Defines “reasonable and prudent parent standard” to be the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the child’s emotional and developmental growth, that a congregate care setting shall use when determining whether to allow a child in foster care to participate in extra-curricular, enrichment, cultural, and social activities.</p>



## Reunification Services

42 U.S.C. § 629a	(a)(7) Defines family reunification services eligible for federal funding under Title IV-B that are no longer time limited while in foster care and may be available to families for up to 15 months after the child returns home.
42 U.S.C. § 671	(a)(15) Requires reasonable efforts to make it possible for a child to safely return to the child’s home.



## Supports for Older Youth

42 U.S.C. § 675	<p>(1)(B) Requires youth engagement in transition planning to begin at the age of 14.</p> <p>(1)(D) Requires case plans for youth over age 14 to include a written description of the programs and services which will help the youth prepare to transition from foster care to adulthood.</p> <p>(5)(C)(i) The court must make findings as part of a permanency hearing about the services needed to assist a youth aged 14 or older to transition from foster care to a successful adulthood.</p>
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42 U.S.C. § 675	<p>(5)(C)(iii) Requires procedural safeguards to assure that in any permanency hearing regarding the transition of a youth from foster care to adulthood, the court must consult with the child regarding the proposed permanency or transition plan.</p> <p>(5)(C)(iv) For a youth 14 or older, any revision or addition to the permanency plan must be developed in consultation with the youth and, if the youth chooses, with two members of the permanency planning team who the youth selects, and who are not a foster parent or caseworker. One individual selected by the youth shall be designated as the youth’s advisor and, as necessary, advocate, regarding the application of the reasonable and prudent standard for youth engagement in normalcy activities.</p> <p>(5)(H) At a minimum 90 days before a young person is set to age out of foster care the child welfare agency must provide the child with assistance and support developing a transition plan that includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.</p> <p>(5)(I) For all youth who are over 14, the state must provide, each year the youth remains in care and without cost, a copy of all consumer reports pertaining to them and assistance resolving any issue identified in the report. The state must also provide any youth who exits care after age 18 an official or certified birth certificate, a social security card, health insurance information, a copy of all medical records, a driver’s license or identification card, and any official documentation necessary to prove that the individual was previously in foster care.</p> <p>(8) State agencies may access federal funding for extending eligibility for foster care services to youth aged 18, 19, and 20.</p>
42 U.S.C. § 675a	<p>(a) Outlines permanency hearing requirements for cases involving a youth’s permanency plan of “another planned permanent living arrangement.” The court must ask the youth about their desired permanency outcome and make a judicial determination regarding the appropriateness of the permanency plan. The agency must document its intensive, ongoing, unsuccessful efforts for family placement; adherence by the foster family or group care setting to the reasonable and prudent parent standard; and opportunities for the youth to engage in developmentally appropriate activities.</p> <p>(b) The child welfare agency must provide all youth in foster care who are 14 or older with a “rights document” that describes that youth’s rights regarding education, health, visitation, and court participation, personal documents, and the right to stay safe and avoid exploitation. The youth must sign and acknowledge that he or she has been provided with that document and has receive an explanation of the rights in an age-appropriate way.</p>
42 U.S.C. §677	Describes the state option to offer support to youth through the John H. Chafee Foster Care Program for Successful Transition to Adulthood, including terms of eligibility and types of support included. Educational and training vouchers are described in subsection (i).

## Additional Resources for the Legal Community on the Family First Prevention Services Act

Text of the [Family First Prevention Services Act](#), enacted as part of the Bipartisan Budget Act of 2018.

### ABA Resources

- [Tool for Engaging the Legal Community in Implementing Family First](#), 2019.
- [Legal Professional Roles: Implementing the Family First Prevention Services Act](#), 2019.
- An [explanation](#) of the distinction between the [Family First Act and IV-E Funding for Legal Representation](#), 2020.
- [New Opportunities for Kinship Families: Action Steps to Implement the Family First Prevention Services Act in Your Community](#), 2019.
- Pokempner, Jennifer. [Leveraging the FFPSA for Older Youth: Improving Transitions](#), 2019 (one of three related articles).

### National and State Resources

- [Family First Resource Database](#), a searchable tool of resources from various partner organizations.
- Children's Defense Fund and Partners. [Implementing the Family First Prevention Services Act Q&A Tool](#), 2020.
- Children's Defense Fund. [Family First Prevention Services Act-Detailed Summary](#), 2018.
- National Council of Juvenile and Family Court Judges. [The Role of the Court in Implementing the Family First Prevention Services Act of 2018](#), 2019.

### Federal Resources

- Children's Bureau, U.S. Department of Health and Human Services. ACYF-CB-IM-18-05: [Strengthening Families through Primary Prevention of Child Maltreatment and Unnecessary Parent-Child Separation](#), November 16, 2018. (Explains the role of courts and the legal community in primary prevention efforts.)
- Prevention Programs: <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program>
- Broader Family First Issues: <https://www.acf.hhs.gov/cb/laws-policies/whats-new>
- Federal HHS/ACYF/CB Resources: [www.familyfirstact.org](http://www.familyfirstact.org)

## Endnotes

1. To learn more about where the Family First Act provides some flexibility and exceptions to new requirements for tribes, *see* Children’s Defense Fund and Partners. [Implementing the Family First Prevention Services Act Q&A Tool](#), Sec. 8, 2020.
2. *See* Family First Prevention Services Act, Pub. L. No. 115-123 (passed as part of the Bipartisan Budget Act of 2018) (2018) (Family First Act), Sec. 50711, codified at 42 U.S.C. § 671(e). Prevention services will be reimbursable at the Federal Medical Assistance Rate beginning in FY2027.
3. H.R. Rep. No. 114-628, at 27 (2016).
4. Family First Act, Sec. 50711(b), codified at 42 U.S.C. § 675(13).
5. *See* U.S. Department of Health and Human Services, Administration on Children, Youth and Families. [ACYF-CB-PI-18-09, Sec. \(B\)\(2\)](#) (“We are not further defining the phrase ‘candidate for foster care’ as it appears in section 475(13) of the Act or further defining the term ‘imminent risk’ of entering foster care for the Title IV-E prevention program.”); *See also* Chapin Hall & Casey Family Programs. [Family First Prevention Services Act: Candidacy by Jurisdiction](#), 2020; Center for the Study of Social Policy. [Responsibly Defining Candidacy within Context of FFP-SA: Five Principles to Consider](#), 2019. *See also* Appendix B for state interpretations of “candidate for foster care.”
6. The [Title IV-E Prevention Services Clearinghouse](#) rates prevention programs in categories outlined by the Family First Act, Sec. 50711(a)(2): “promising,” “supported,” or “well-supported,” according to the number and quality of studies that demonstrate efficacy.
7. *See* U.S. Department of Health and Human Services, Administration on Children, Youth and Families. [ACYF-CB-PI-19-06: Transitional Payments for the Title IV-E Prevention and Family Services and Programs](#) (regarding transitional payments for the Title IV-E Prevention and Family Services and Programs).
8. *See* 42 U.S.C. § 629a(a)(1)(B).
9. *See* 45 C.F.R. § 205.10 (describing the administrative hearings before an impartial hearing officer, including the opportunity for individuals to be represented by legal counsel or another authorized representative); 45 C.F.R. § 1355.30(k) (providing that the hearing procedures described in 45 CFR § 205.10 shall apply to all Title IV-B and Title IV-E programs). *See also* Administration for Children and Families, Children’s Bureau. *Child Welfare Policy Manual: 8.4G(1): TITLE IV-E, General Title IV-E Requirements, Fair Hearings* (noting that the fair hearings available for appeals described in 45 C.F.R. § 205.10 may relate to prevention services).
10. ABA Center on Children and the Law & National Council of Juvenile and Family Court Judges. *Judge’s Action Alert: Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases*, November 2020.
11. For more information on federal funding for legal representation, *see* resources by the [Family Justice Initiative](#) and [National Association of Counsel for Children](#).
12. *See, e.g.*, 42 C.F.R. Part 2.
13. *See, e.g.*, Rivaux, Stefanie et al. “The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children.” *Child Welfare* 87, 2008, 151–168 (noting that in a study of child welfare caseworker decision making, when compared to Anglo Americans, African Americans were 77.0% more likely to be removed rather than offered in-home services); Kozhimannil, Katy Backes. “Racial and Ethnic Disparities in Postpartum Depression Care Among Low-Income Women.” *Psychiatry Services* 62(6), June 2011, 619-625 (reporting data that white women seek postpartum mental health care more than twice as often as black women and nearly twice as often as Latina mothers); Feldman, Nina & Aneri Pattani. [“Black Mothers Get Less Treatment for Their Postpartum Depression.”](#) National Public Radio Morning Edition, November 29, 2019 (explaining that mistrust of public systems is often a factor leading to discrepancies in the provision of postpartum depression support).
14. *See* Family First Act Sec. 50712, codified at 42 U.S.C. § 672(j).
15. Siegel, Robert & Joshua Sharfstein. [“For Newborns Exposed to Opioids, Health Issues May be the Least of Their Problems.”](#) National Public Radio, June 30, 2017 (explaining that a baby removed from his mother based on prenatal drug exposure tends to fare worse, not better); Abrahams, Ron & Nancy Rosenbloom. [“Effective Strategies for Courtroom Advocacy on Drug Use and Parenting.”](#) *Child Law Practice Today*, October 2019 (describes the benefits of a “harm reduction approach” as an alternative to maternal child separation).
16. *See* Wall-Wieler, Elizabeth et al. [“Mortality Among Mothers Whose Children Were Taken Into Care by Child Protection Services: A Discordant Sibling Analysis.”](#) *American Journal of Epidemiology* 187(6), June 2018, 1182–1188 (research found that “mothers whose children are taken into care have greater rates of mortality, specifically avoidable mortality”); Wall-Wieler Elizabeth et al. “Maternal Health and Social Outcomes after Having a Child Taken into Care: Population-based Longitudinal Cohort Study Using Linkable Administrative Data.” *Journal of Epidemiology Community Health* 71(12), 2017, 1145–1151 (study found that health and social situation of mothers involved with child protection services deteriorates after their child is taken into care).
17. *See* U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau. [The AFCARS Report](#), August 22, 2019, 2.
18. *See id.*
19. Family First Act Sec. 5071(a)(2), codified at 42 U.S.C. § 672(j)(1).
20. 42 USC 672(a)(2)(A).

21. 42 U.S.C. § 675(5).
22. See Volunteers of America and Annie E Casey Foundation. [Family-Based Residential Treatment Directory of Residential Substance Use Disorder Treatment Programs for Parents with Children](#), 2019.
23. See 42 U.S.C. § 675 (explaining the case plan must ensure the “child receives safe and proper care and that services are provided” to parents and the child to “facilitate return of the child to his own safe home or the permanent placement of the child”).
24. See, e.g., Maze, Candice. [Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation](#). Washington, DC: ABA Center on Children and the Law, 2010.
25. 42 U.S.C. §675(5)(E) (exceptions to this timeline exist by statute for cases involving placement with a relative, compelling reasons why TPR is not in the child’s best interests, and evidence that the agency has failed to provide reasonable efforts to reunify the family).
26. See 42 U.S.C. § 675(5)(E).
27. Volunteers of America and Annie E Casey Foundation, 2019.
28. See Family First Act, Sec. 50741, codified at 42 U.S.C. § 672.
29. See Generations United. [Children Thrive in Grandfamilies](#), undated.
30. The federal preference for a child’s placement in the least-restrictive, most family-like setting dates back to the Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, see 42 U.S.C. § 675(5).
31. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351; Child Welfare Information Gateway. [Placement of Children with Relatives](#). Washington, DC: U.S. Department of Health and Human Services; Casey Family Programs, ABA Center on Children and the Law, and Generations United. [Foster Care Licensing Summary and Analysis](#) (web page):.
32. “[T]he term ‘foster family home’ means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing...” 42 U.S.C. § 672(c)(1) (language prior to codification of the relevant section of the Family First Prevention Services Act of 2018).
33. Family First Act, Sec. 50741(b).
34. See Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, Sec. 111.
35. See Administration for Children and Families, Department of Health and Human Services. [ACYF-CB-IM-19-01: National Model Foster Family Home Licensing Standards](#), February 4, 2019.
36. See National Association for Regulatory Administration. [Model Foster Family Home Licensing Standards](#), 2008.
37. See Family First Act, Sec. 50731.
38. See, e.g., ABA Center on Children and the Law, Casey Family Programs, Children’s Defense Fund, and Generations United. [Leveraging the Family First Prevention Services Act to Improve Use of the Title IV-E GAP](#), 2019.
39. See 42 U.S.C. § 671(a)(31).
40. See Family First Act, Sec. 50741, codified at 42 U.S.C. § 672(k); see also Sec. 50745(a)(requiring criminal records checks and checks of child abuse and neglect registries for adults working in congregate care settings).
41. 42 U.S.C. § 675(5).
42. Strengthening Families and Preventing Sex Trafficking Act of 2014, Pub. L. 113-183, Sec. 111(a)(1).
43. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, Sec. 204, codified at 42 U.S.C. § 675(1); Every Student Succeeds Act, Sec. 1005, codified at 20 U.S.C. § 6311(g)(1)(E).
44. See Family First Sec. 50741(a), codified at 42 U.S.C. § 672(k)(2)(B).
45. See National Foster Care Youth & Alumni Policy Council. “[A Historic Opportunity to Reform the Child Welfare System: Youth & Alumni Priorities on Special Populations](#),” September 2020, 6-7.
46. See Pokempner, Jennifer. [Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions](#). Washington, DC: ABA Litigation Section Children’s Rights Committee, 2019.
47. See Family First Sec. 50741(a), codified at 42 U.S.C. § 672(k)(2)(C).
48. See 42 USC 672(c)(2).
49. See, e.g., National Network for Youth and Child Focus. [The Family First Prevention Services Act: Addressing Implications for Youth Homelessness](#), November 2019.
50. See Family First, Sec. 50741(a), codified at 42 U.S.C. § 672(k)(2)(D).
51. See, e.g., resources on child sex trafficking from the [National Council of Juvenile and Family Court Judges](#), and [Rights4Girls](#).
52. See Family First Act, Secs. 50741, 50742, 50745, 50746, codified at 42 U.S.C. §§ 672(k), 675a(c), 671(a)(20).
53. See Family First Act, Sec. 50742, codified at 42 U.S.C. § 675a(c)(1)(B).
54. See Family First Act, Sec. 50742, codified at 42 U.S.C. § 675a(c)(1)(B)(iii)(III).
55. Family First Act Sec. 50742, codified at 42 U.S.C. § 675a(c)(2).

56. Family First Act, Sec. 50742, codified at 42 U.S.C. § 675a(c) (4).
57. Family First Act, Sec. 50742, codified at 42 U.S.C. § 675a(c) (1)(B)(ii).
58. See National Foster Care Youth & Alumni Policy Council, “[A Historic Opportunity to Reform the Child Welfare System: Youth & Alumni Priorities on Quality Residential Services](#),” February 2020, 5.
59. The primary sources of child welfare funding are IV-E dollars (Title IV-E of the Social Security Act) which are open-ended and provide the majority of federal funding, and IV-B dollars (Title IV-B of the Social Security Act) which provide capped discretionary and formula grants to states. Title IV-B consists of several categories, including money allocated to all states through the Promoting Safe and Stable Families Program for child and family services, which include: family support, family preservation, family reunification, and adoption promotion and support. Each state must spend a portion of its IV-B resources on programs in each of these four categories. For comprehensive discussion of federal child welfare funding, see Emilie Stoltzfus. *Child Welfare Funding in FY2018*, Congressional Research Service, July 30, 2018.
60. Social Security Act Section 431 (a)(7), codified at 42 U.S.C. § 629a(a)(7).
61. Specifically, IV-B Reunification Services can include: (i) Individual, group, and family counseling. (ii) Inpatient, residential, or outpatient substance abuse treatment services. (iii) Mental health services. (iv) Assistance to address domestic violence. (v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries. (vi) Peer-to-peer mentoring and support groups for parents and primary caregivers. (vii) Services and activities designed to facilitate access to and visitation of children by parents and siblings. (viii) Transportation to or from any of the services and activities described in this subparagraph.
62. See Family First Act, Sec. 50753(a)-(d), codified at 42 U.S.C. § 677.
63. See Family First Act, Sec. 50753(e), codified at 42 U.S.C. § 675(5)(I).
64. See 42 U.S. Code § 677 (a)(1).
65. See Strengthening Families and Preventing Sex Trafficking Act of 2014, Pub. L. 113-183, Sec. 113.
66. See 42 U.S. Code § 677(i).
67. See Strengthening Families Act, Sec. 114.
68. See, e.g., ABA Youth Engagement Project. “[How Adolescent Brain Science Supports Youth Engagement in Court Hearings and Case Planning](#).” In *Adolescent Brain Research Toolkit*, 2019.
69. See Family First Act, Sec. 50752. This provision reauthorizes for five years Title IV-B Subparts 1 and 2, which include, but are not limited to CIP grants.
70. See 42 U.S.C. § 629h(b)(1).
71. Family First Act, Sec. 50741(c), codified at 42 U.S.C. § 629h(b)(1).
72. See Family First Act, Sec. 50723, codified at 42 U.S.C. § 629g(f).
73. See Family First Act, Sec. 50722.
74. See Family First Act, Sec. 50732.
75. See Family First Act, Sec. 50771.
76. See, e.g., Family First Act, Secs. 50711, 50722, 50743, 50753.
77. See Family First Act, Sec. 50751.
78. See Family First Act, Sec. 50751.
79. See Family First Act, Sec. 50761.
80. See Family First Act, Sec. 50781.
81. “Special needs” of a child for the purposes of adoption or guardianship assistance is defined at 42 U.S.C. § 673(c).
82. Sankaran, Vivek. “[Foster Kids in Limbo: The Effects of the Interstate Compact on Children in Foster Care](#).” *Child Law Practice Today* 33, June 2014.