



# Family First Prevention Services Act: Judicial and Legal Practice Considerations

*After a Petition is Filed: Child in Foster Care*

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# Housekeeping

- CLE credit information
- We welcome questions throughout session



# Agenda

1. Introduction

2. Kinship Support

3. Foster Family Setting

4. Residential Treatment

5. Other Settings

Family First Act  
overview

Colorado  
implementation

Relevant  
considerations

# Family First Prevention Services Act

Pub. L. 115–123  
(part of Bipartisan  
Budget Act of  
2018), enacted  
Feb. 9, 2018

# Family First Act Intent



Reduce	Reduce foster care entries through increased use of prevention services
Prioritize	Prioritize placement in a foster family home, preferably with kin
Limit	Limit the use of group care settings based on specific needs
Support	Support transitions out of foster care

# Title IV-E Reimbursable Placement Options Review

Foster family home,  
including with kin

High quality residential  
setting with services for  
youth who have been or  
are at risk of being sex  
trafficking victims

Setting specializing in  
providing prenatal, post-  
partum or parenting  
supports for youth

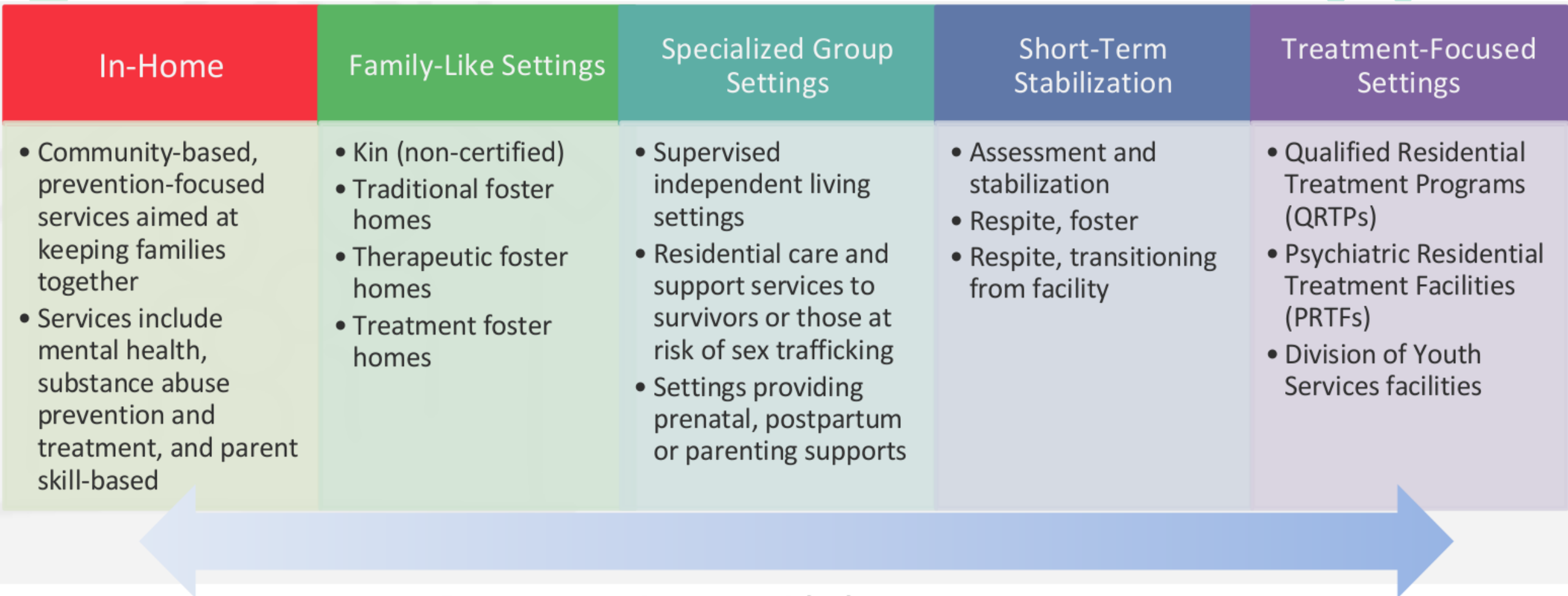
Supervised setting for  
youth over 18 who are  
living independently

Qualified Residential  
Treatment Program  
(QRTP)

Family residential  
substance abuse  
treatment

Non-QRTP congregate  
care setting up to  
two weeks

# Colorado Care Continuum





# Prioritizing Family-Based Care: Kinship Supports

# Kinship Family Strengths: Children Thrive

Grandfamilies.org



**generations  
united**  
Because we're stronger together\*

\* See Children Thrive in Grandfamilies fact sheet, available at [www.grandfamilies.org](http://www.grandfamilies.org) and [www.gu.org](http://www.gu.org)

# Family First Act: Key Kinship Provisions

- Prevention services – first time federal **option** to use federal child welfare dollars to fund prevention services for children, kinship caregivers and parents
- Kinship navigator programs – **option** to offer these programs and receive federal reimbursement up to 50%
- Improving Licensing Standards, incl. for Kin Placements – **required** to report back to HHS on the licensing standards and use of waivers
- Group care – federal reimbursement for specified group placements only, with an emphasis on including kin in treatment and permanency planning
- Improving Relative Placement Across State Lines – states are **required** to develop an electronic case processing system to expedite placements across state lines

[www.grandfamilies.org](http://www.grandfamilies.org)



# Colorado “Kin” Definition

- “Kin” may be relative of the child, a person ascribed by the family as having a family-like relationship with the child, or a person who has a prior significant relationship with the child. These relationships take into account cultural values and continuity of significant relationships with the child.
- ICWA Kin Caregiver as defined in 25 U.S.C. Sec. 1903 includes an “extended family member” as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, is a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

# Colorado Implementation



- CDHS Kinship Task Force created to:
  - Look at statute/rule changes necessary to reduce barrier to kin becoming certified
  - Establish practices that better support kinship care
  - Promote a change in philosophy that better supports kinship care
  - Ensure placement is made with the best interests of the child in mind
- Kinship Navigator:
  - Will build a network of support that utilizes natural supports, existing public and private programs and services to meet the needs of kinship care providers
  - Is being evaluated



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.

#### Part I: Before a Petition is Filed, 3

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# ABA Legal Guide

## Purposes:

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

[https://www.americanbar.org/content/dam/aba/administrative/child\\_law/family-first-legal-guide.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/family-first-legal-guide.pdf)



# Selected Considerations for Legal Stakeholders

- Explore what efforts have been made to identify, notify, and engage all adult relatives. Have both parents' relatives been identified, notified, and engaged?
- If the child is placed with a kin caregiver who is not licensed as a foster home, determine why not.
- *Implementation tip:* 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.

# Prioritizing Family-Based Care: Foster Family Homes



# Foster Family Home Focus



Definition: Home of individual or family that:

- Is licensed or approved by the state
- Adheres to reasonable and prudent parenting standard
- Provides care to six or fewer children in foster care, with exceptions to allow:
  - Parenting youth to remain with their child
  - Keeping siblings together
  - Keep children with meaningful relationships with the family
  - Care for children with severe disabilities

# Colorado Implementation



- Definition of foster home expanded to allow for 6 (rather than 4) children/youth in foster care
- Expansion of foster family home level of care:
  - Creating therapeutic foster home level
  - Expanding treatment foster home level



# Selected Considerations for Legal Stakeholders

- Determine whether siblings are placed together in the foster family home. If not, has a safety reason been articulated that prevents it?
- Does the child/youth have a severe disability? If so, determine can this foster family home provide tailored services and support? Does it need needs additional supports and training to care for the child effectively? Advocate and or issue orders accordingly.
- *Implementation tip:* Join your state's discussion about how to improve recruitment and retention of foster family homes.

# Prioritizing Family-Based Care: Reducing Congregate Care Settings & QRTPs

# Qualified Residential Treatment Program

Trauma-informed treatment model, designed to meet specific clinical needs of youth with “serious emotional or behavioral disorders or disturbances”

Assessment by “qualified individual” an early required step

Numerous quality & safety assurances included

Family outreach & integration of family in treatment program is prioritized

Discharge planning & family-based aftercare supports to be provided for 6+ months after discharge

# QRTP Assessment

- Determines appropriateness of placement and eligibility for federal Title IV-E reimbursement of such placement
- Assessment must be:
  - Completed within 30 days
  - By “qualified individual”
  - With tool that is age appropriate, evidence-based, validated, functional assessment (HHS will release guidance)
  - Conducted in conjunction with a family and permanency team (as defined)
- Assessment must recognize children should be placed with their siblings unless there is a **finding by the court** that such placement is contrary to their best interest

# Assessment, cont.

- Child's case plan must include:
  - Evidence of family and permanency team meetings
  - Evidence that the assessment was determined in conjunction with the team
  - Placement preferences of the family and permanency team relative to the assessment. If those preferred placements not recommended by the assessment, the reasons why not.
- If QRTP is determined necessary, professional must document in writing why child's needs cannot be met in a family.
  - A shortage of foster family homes is not an acceptable reason for residential placement.

# Court Review of QRTP Assessment

## Within 60 days of QRTP placement:

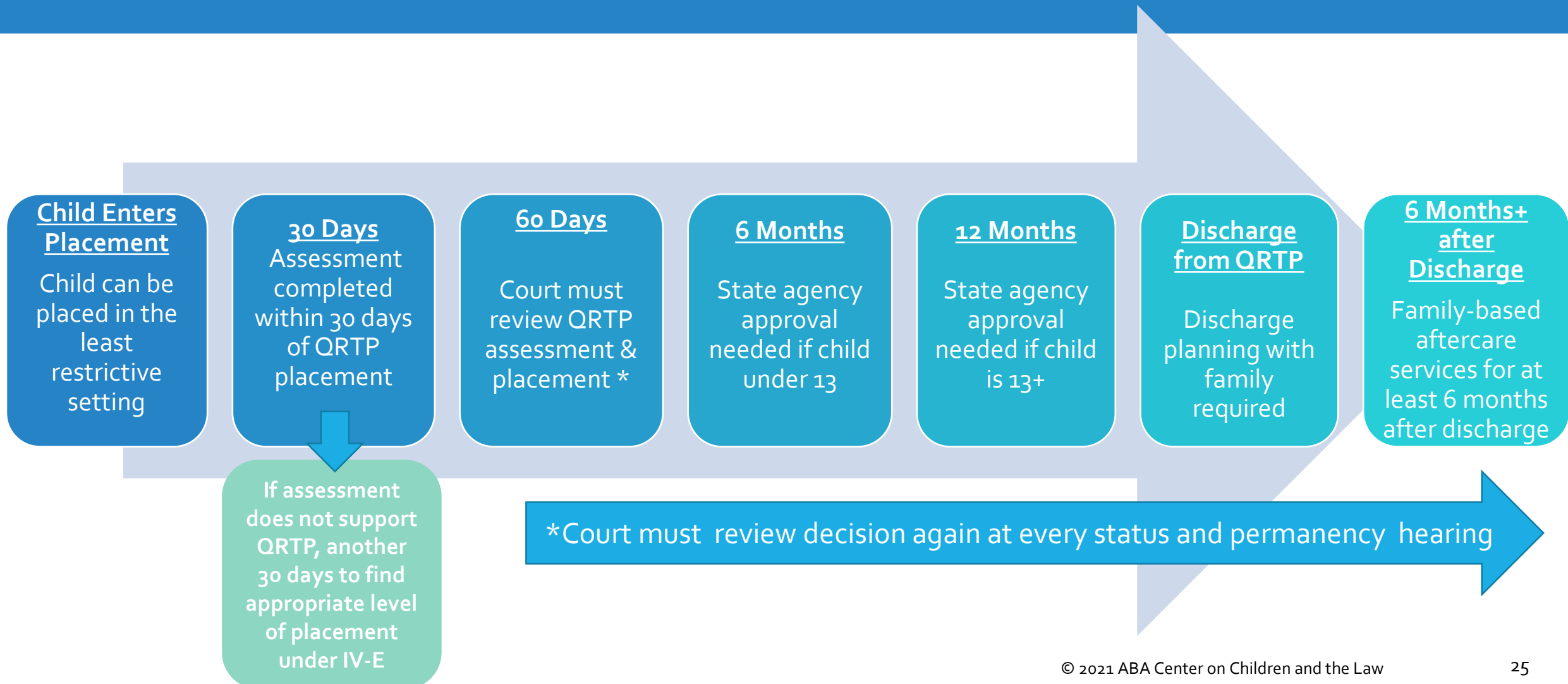
- Court review to approve or disapprove of the placement
- Determine if placement is “most effective and appropriate level of care for the child in the least restrictive environment” consistent with the permanency plan
- Can child’s needs be met in foster family home?

## At every status & permanency hearing:

- Confirm that State has submitted evidence:
  - Ongoing assessment confirms need for QRTP
  - Specific treatment or service needs that will be met
  - Length of time child expected to need additional treatment
  - Efforts made to prepare child to transition to a family



# QRTP Timeline



# Additional Placement Checks & Balances



## Protocols to prevent inappropriate diagnoses

- States must establish protocols ensuring children in foster care are not inappropriately diagnosed with
  - mental health conditions
  - other emotional or behavioral conditions
  - medically fragile conditions, or
  - developmental disabilities.
- Inappropriate diagnoses must not lead to inappropriate non-foster family home placements.

## Reporting on population of youth in juvenile detention

- States must assure that they will not pursue policies or practices that will result in significant increase in number of youth involved in juvenile justice system because of new congregate care restrictions.
- Federal government to assess impact in report due 2025.

# Current Colorado Placement Data

- As of 9/3/21:
  - 4,224 children/youth in OOH care (3,946 in DCW, 278 in DYS)
  - 590 children/youth in congregate care (339 in DCW, 251 in DYS)
  - 245 Total children/youth in RCCFs (210 in DCW, 35 in DYS)
- In 4/20, Colorado had:
  - 164 group center beds
  - 72 group home beds

# Colorado Implementation:

## Independent Assessments



- All regions have begun IA rollout
- 14-day timeline
- <30 Independent Assessments completed and reviewed
- 58% recommended residential; 42% recommended treatment in community
- 77% involved crossover/JJ youth
- 77% had GALs listed; 90% of those GALs were interviewed
- 31 Qualified Individuals trained by the Office of Behavioral Health

*September 2021 data from CDHS*

# Colorado Implementation:

## QRTP Hearing & Bench Card



- QRTP Bench Card and trainings
- Hearing within 60 days of QRTP, unless:
  - Child/youth/juvenile, GAL or any party objects to the placement (30 days) or
  - Child/youth/juvenile is placed in a QRTP, but IA does not recommend that level of care (30 days)
- Court order to include whether QRTP:
  - Provides the most effective and appropriate level of care for the child/juvenile/youth,
  - Is the least restrictive environment, &
  - Is consistent with the permanency plan.
- 23 QRTP program applications submitted to CDHS as of 8/21; 230 QRTP beds envisioned

# Colorado Implementation: Juvenile Justice



- Family First Act applies to delinquency cases
- Youth involved in delinquency case will need to follow QRTP process for placement in non-family like settings
- Initial QRTP hearing may be done by the Administrative Review Division (ARD) if juvenile is committed to DYS and no longer under the jurisdiction of the court
- When a court commits a juvenile to DYS, it shall make a specific determination about whether the lack of available and appropriate congregate care placements is a contributing factor
- See [Family First Juvenile Justice System flowchart](#)



# Selected Considerations for Legal Stakeholders

- What evidence should be provided for QRTP hearings?
- What does the discharge from QRTP plan look like? What services are needed to ensure the child's successful transition to a family-based setting?
- *Implementation tip:* Ensure a focus on children's school stability. What impact will QRTP or other congregate care placement have on those areas? How can adverse impacts be mitigated?

# Prioritizing Family-Based Care: Other Settings



# Non-Family Settings



In addition to QRTPs, federal funding remains available for:

- Setting specializing in providing prenatal, postpartum, or parenting supports for youth;
- Supervised independent living setting for youth ages 18 and over;
- High-quality residential care setting for youth who are victims or at risk of becoming victims of sex trafficking; and
- Congregate setting for up to 2 weeks.

# Family-Based Substance Use Treatment

- IV-E funds for child placed WITH parent in inpatient treatment setting
- Considered a foster care placement
- Must be trauma-informed
- Up to 12 months
- No income test



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# Colorado Implementation



- In progress, so keep an eye out....
- Specialized settings
  - Draft rules developed on eligibility criteria for youth victims of sex trafficking and for pregnant and parenting youth  
(<https://co4kids.org/family-first-dashboard>)
- CDHS exploring options related to substance use disorder treatment of parents



# Selected Considerations for Legal Stakeholders

- Consider whether the most appropriate placement for each expectant or parenting youth is a group setting with relevant supports or a family-based setting.
- What other legal needs may a child who is a victim of sex trafficking have?
- *Implementation tip:* Invite individuals with personal experience in 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.

# Learn More: Colorado

- ❖ <https://co4kids.org/family-first/placement-services>
- ❖ <https://co4kids.org/judicial-and-legal-community>
  - Includes QRTP Bench Card & trainings
  - [Juvenile Justice System Flowchart](#) (draft), including potential QRTP placement
- ❖ Talk to your local BPCT about local prep
- ❖ [Independent Assessment-QRTP Toolkit:](#)  
<https://drive.google.com/drive/folders/1nwJHWHlkPhmdw4Ehzuqo-qUw6lk3dj5R>

# Learn More: National

- ❖ ABA Center on Children and the Law resources
  - [Legal Guide, Tool for Engaging the Legal Community, & Kinship provision checklist](#)
- ❖ Kinship care [Family First resources](https://www.grandfamilies.org/) on <https://www.grandfamilies.org/>
- ❖ National Foster Youth & Alumni Policy Council, *Priorities on Special Populations*
- ❖ Children's Rights, [Families Over Facilities: Ending the Use of Harmful and Unnecessary Institutions and Other Group Facilities in Child Welfare Systems](#)
- ❖ [Implementing the Family First Prevention Services Act](#): Nearly 200 pages of FAQs!

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# THANK YOU