



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

*Before a Petition is Filed: Prevention Services*

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# ABA Center on Children and the Law

- **Mission:** To promote access to justice for children and families
- **Staff:** 16-person team of attorneys and core staff
- **Commission:** 20 ABA members advise on policies and programming focused on youth legal needs

**Approach:** Collaboration and coalition building at local, state and national levels

Grant projects across the country focused on improving:

- *legal representation,*
- *legal systems that affect children, parents and families.*

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# Housekeeping

- CLE credit information
- We welcome questions throughout session



# Agenda

Brief Overview of Federal Law

Colorado Implementation Plans

ABA Legal Guide: Relevant Considerations by Role

Resources

# 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

# Legal Community Involvement in Prevention



- Children's Bureau leadership has noted court's important role in prevention efforts:
  - "[J]udges and attorneys play absolutely critical roles in prevention in and out of the courtroom"; and
  - Enhanced attention to reasonable efforts will have a "ripple effect across the justice system. Prevention is the work of the courts." - Jerry Milner, Former Assoc. Comm., Children's Bureau, HHS



# Prevention Services Review



- Federal IV-E funding available for first time
- Program eligibility requirements:
  - Mental health services, substance use services, or parenting skills
  - Evidence-based & trauma-informed
- Duration: 12 months per “episode”
- In practice:
  - May be one part of a state’s overall prevention services array
  - All services may not be available throughout state – talk to your local agency!

# Prevention Services, cont.



- Eligible groups:
  - “Candidates” for foster care at imminent risk of entering care – states have flexibility
  - Pregnant and parenting youth in foster care
  - Birth parents, adoptive parents, relative and non-relative guardians of candidates for foster care
- No income test
- Title IV-E Prevention Services Clearinghouse: 36 approved so far

# Colorado Implementation

- “Candidacy” definition
  - For Title IV-E Prevention Services, a child/youth is a “candidate for foster care” when at serious risk of entering or re-entering foster care and who is able to remain safely in the home with provision of mental health, substance use disorder, or in-home parenting services for the child/youth, parent, or kin caregiver.
  - 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 or children that may affect the parents’ ability to safely care for and nurture their children.
  - Foster youth who are pregnant and/or parenting are eligible for prevention services.

## Colorado Implementation, cont.

- “Circumstances and characteristics” for candidacy *include*:
  - Substance use disorder or addiction
  - Mental illness
  - Lack of parenting skills
  - Limited capacity or willingness to function in parenting roles
  - Parents’ inability, or need for additional support, to address serious needs of a child/youth or related to the child/youth’s behavior or physical or intellectual disability
- Transition Act funding available
- Services available in CO: Family First plan services AND other services



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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# 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)

# Legal Guide Organization

Chronology: Following a family's potential involvement with the child welfare system



Basic overview of the provision: what it does, why included, how it works



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



How legal community can support Family First implementation



Research you can cite in support of your goals



How this provision connects with other child welfare laws



# Selected Considerations for County/City Attorney



- Advise agency staff about Family First Act's opportunities.
- Advise agency staff about value of fully using prevention services before considering removal in cases involving mental health, substance use, or parental support needs.
- Reasonable efforts to prevent removal: If a petition must be filed after services provided, prepare evidence of the prevention services offered and used as an element of the agency's reasonable efforts.

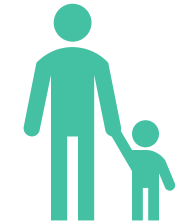
# Selected Considerations for GAL/Child Counsel



- If you are appointed after 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.
- Determine if youth who are at risk of or involved with the juvenile justice system can access prevention services
- Ask your expectant or parenting teen clients in foster care if they are interested in prevention services and advocate accordingly. They do not have to meet “candidate” definition.



# Selected Considerations for Respondent Parent Counsel



- If you are appointed after a petition for removal is filed, advocate for prevention services for the parent, kinship caregiver, or child to be offered as an alternative to removal.
- If the child is removed, request a copy of the family's prevention plan (or other reflection of prevention services) to review what the agency offered and whether reasonable efforts have been made to prevent removal.
- If reasonable efforts were not made, request a "no reasonable efforts" finding and an order returning the child to the family with appropriate services.

## Selected Considerations for Judicial Officer



- When considering a request for removal, ask if the agency made reasonable efforts to prevent removal, which may include providing federally supported prevention services.
- If reasonable efforts have not been made, consider court orders for prevention services that may allow the child to remain safely at home.
- Consider relevance of prevention services outside dependency & neglect context. Who else could benefit from prevention upstream?



# Legal Community Support for Implementation

- Understand what prevention services are available, which are under development, and what the status of implementation is Colorado.
- Consider when prevention services could support families in other types of cases – e.g. housing, truancy, juvenile delinquency – and help clients access those services.
- Collaborate with agency and system partners on whether attorneys will be assigned at the agency during prevention services and whether counsel for children or parents will be appointed during pre-removal prevention services.

# Learn More: Colorado

- ❖ <https://co4kids.org/family-first/prevention-services>
  - Includes [\*Family First Prevention Services Act in Colorado: An Implementation Guide for County Directors\*](#)
- ❖ <https://co4kids.org/judicial-and-legal-community>

# Learn More: National

- ❖ ABA Center on Children and the Law resources
  - ❖ [Legal Guide](#)
  - ❖ [Tool for Engaging the Legal Community](#)
  - ❖ [Kinship provision checklist](#)
- ❖ [\*Leveraging the FFPSA for Older Youth: Prevention Provisions\*](#), Jennifer Pokempner (2019)
- ❖ [\*Family First Prevention Services Act: Pregnant & Parenting Youth FAQs\*](#), Center for the Study of Social Policy (2018)
- ❖ Approved prevention programs listed in federal [HHS Title IV-E Prevention Services Clearinghouse](#)
- ❖ [Implementing the Family First Prevention Services Act](#): Nearly 200 pages of FAQs!

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# THANK YOU