



**CAMPAIGN OF THE NATIONAL JUVENILE JUSTICE & DELINQUENCY  
PREVENTION COALITION**  
[www.act4jj.org](http://www.act4jj.org)

## **Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration**

The Family First Prevention Services Act (“Family First”) was passed as part of the Bipartisan Budget Act of 2018 (H.R. 1892).<sup>1</sup> Although some provisions were effective upon enactment, the most significant state changes began on October 1, 2019, with states having the option to delay implementation until as late as October 2021.

Family First makes changes to how funding under Title IV-E of the Social Security Act (the most significant federal funding stream for child welfare) may be used. The primary goals of these changes are to encourage greater use of preventative services and to discourage the inappropriate use of congregate (group) care by defining and limiting the types of settings eligible for federal funding.

The material in this resource reflects the law and agency guidance as of July 2019, with some updates added through October 2019, as noted in the text. The Children’s Bureau (the federal agency that administers Title IV-E child welfare funding) is expected to provide additional guidance to states on Family First throughout 2019 and beyond. There are also currently bills under consideration by Congress that could significantly impact the discussion below.<sup>2</sup> Additionally, a website, [www.familyfirstact.org](http://www.familyfirstact.org), has been developed to collect and share updates on Family First and its implementation.

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<sup>1</sup> Full text available at [https://www.familyfirstact.org/sites/default/files/PLAW-115publ123\\_FFPSA%20.pdf](https://www.familyfirstact.org/sites/default/files/PLAW-115publ123_FFPSA%20.pdf).

<sup>2</sup> See, e.g., S.107 - State Flexibility for Family First Transitions Act and S. 1376/H.R. 2702: Family First Transition and Support Act of 2019.

## RELEVANT PROVISIONS

Given the prevalence of crossover between the child welfare and juvenile justice systems, many pieces of this sweeping law could impact the number and experiences of justice-involved youth. The provisions most relevant to youth currently involved (or at high risk for involvement) in the justice system are described below. (See "Additional Resources," below, for links to overviews of the full law.)

**Foster Care Prevention** (Section 50711): One of the most significant changes to federal funding rules in Family First is to allow states to use Title IV-E funding to provide services *before* youth are placed in foster care, for up to 12 months (with additional 12 month periods allowable).<sup>3</sup> The law still requires that a youth be a "candidate" for foster care in order for their family to be served by prevention funding.

- Family First defines a candidate for foster care as a child "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 specified...that are necessary to prevent the entry of the child into foster care are provided." A child cannot simultaneously be a "candidate" and be *in* foster care, but the definition does include children "whose adoption or guardianship arrangement is at risk of a disruption or dissolution that would result in a foster care placement."
- The law does not define "candidate" or "imminent risk" further, but the Children's Bureau has previously said: "A candidate for foster care is a child who is at serious risk of removal from his/her home because the State is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the State agency has no formal involvement with the child or simply because s/he has been described as "at risk" due to circumstances such as social/interpersonal problems or a dysfunctional home environment."<sup>4</sup> (The Children's Bureau also considers "serious risk" and "imminent risk" to be synonymous.)

Youth in foster care who are pregnant and parenting can also be served through prevention funds, and funding can be used to provide appropriate services to the parents/family of candidates. The reimbursement will cover half of the costs of the eligible interventions through the end of fiscal year 2026 (if not already eligible for other federal funding, such as Medicaid), and then will switch to a formula-based level of reimbursement. States must submit 5-year prevention plans that meet the requirements set out in the law, and each youth receiving services must have a written prevention plan. There are no family income requirements tied to the prevention services.

The services offered to families can include mental health, substance abuse or parenting programs and must be rated promising, supported, or well-supported in the Title IV-E

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<sup>3</sup> Administration on Children, Youth and Families, *Program Instruction 18-09*. (November 30, 2018)

<https://www.acf.hhs.gov/sites/default/files/cb/pi1809.pdf>.

<sup>4</sup> Administration for Children & Families, Children's Bureau. *Child Welfare Policy Manual: 8.1D Candidates for title IV-E foster care*. [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=79](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=79).

Prevention Services Clearinghouse<sup>5</sup> or be approved for transitional payments (see below). To gain these ratings, the intervention must be manualized and have evidence behind it including controlled studies that, through an independent systematic review, have been shown to have been "well-designed and well-executed." Supported and well-supported practices must also demonstrate sustained effects for 6 months and 1 year (respectively) after treatment ends. At least 50% of funds must be spent on well-supported services. State plans must also include "a well-designed and rigorous evaluation strategy" for each intervention used, unless this requirement is waived by the Secretary of Health and Human Services. There are also *maintenance of effort* requirements to ensure that the federal funding adds to, rather than substitutes for, state prevention spending.

The evidence requirements are not as stringent for prevention programs used by tribes; HHS is directed to "permit the provision of the services and programs in the form of services and programs that are adapted to the culture and context of the tribal communities served." Also, the law does specifically contemplate the Clearinghouse including "programs that meet the requirements described... including culturally specific, or location- or population-based adaptations of the practices."

Funding can also be used for evidence-based "kinship navigator programs"<sup>6</sup> for relative caregivers (if they meet the Clearinghouse requirements) and for room and board for children placed in licensed substance abuse treatment facilities with their parents (Sections 50712, 50713).

**Congregate Care** (Sections 50741, 50742): Another major goal of Family First is to reduce over-reliance on congregate care. Under the law, states will only be able to receive Title IV-E payments for room and board<sup>7</sup> for children (beyond two weeks) in *family foster care* placements or in a *very limited set of "child care institutions."*

"*Child care institutions*" must be licensed appropriately, may not house more than 25 young people (if a public institution), and "cannot be detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent." The only child care institution placements that qualify for Title IV-E funding under Family First are:

- qualified residential treatment programs (QRTPs);
- specialized programs for pregnant and parenting youth;
- programs for youth who have experienced, or are at risk of, commercial sexual exploitation; or
- supervised independent living programs for youth age 18 or older.

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<sup>5</sup> <https://preventionservices.abtsites.com/>.

<sup>6</sup> Kinship navigator programs help caregivers who are relatives or "fictive kin" (e.g., individuals who have a family-like relationship but aren't legally related) connect to services and supports. Specific requirements for kinship navigator programs under Family First are outlined in the Children's Bureau's Program Instruction 18-11, available at <https://www.acf.hhs.gov/sites/default/files/cb/pi1811.pdf>.

<sup>7</sup> Administrative expenses will still be eligible for Title IV-E funds.

QRTPs are defined very specifically and must be *trauma-informed* and “designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances.” They must also have licensed nursing and clinical staff available 24 hours a day, 7 days a week who are onsite according to the trauma-informed treatment model; be licensed; be accredited by an organization listed in the Act or approved by the Secretary; facilitate and document family engagement in treatment; and provide discharge planning and at least 6 months of aftercare support. Family First also includes additional assessment requirements and deadlines to ensure QRTPs are used only when necessary. For example, a qualified individual must perform a functional assessment to determine if QRTP placement is needed, and the law explicitly states that a “shortage or lack of foster family homes shall not be an acceptable reason for determining that the needs of the child cannot be met in a foster family home.” The assessment also cannot be completed by a state agency employee or affiliate of the placement (although it is possible to apply for and receive a waiver to this requirement for an “objective” professional or clinician). (Note that Family First includes many data collection and oversight requirements, but only the QRTP ones are summarized in this document as they are potentially most relevant to youth with juvenile justice involvement.)

Note that *foster family homes*, which are not considered group/congregate placements, can have up to 6 children (or more in specified situations, such as keeping sibling groups together).<sup>8</sup>

**Impact on Juvenile Justice** (Section 50741): Family First requires that state plans include certifications that, in addressing the group care restrictions, “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.” It also requires a study and report, to be published by GAO by December 31, 2025, on the impact of the Family First group care restrictions on State juvenile justice systems.

**Transition and reunification services** (Section 50753, 50721): Family First makes changes to the Chafee Foster Care Program for Successful Transition to Adulthood,<sup>9</sup> including allowing states to extend the age eligibility for housing, education, and other services to 23 if the state provides extended foster care (foster care until age 21), and for Education and Training Vouchers to age 26. It also extends the amount of time that family reunification services can be funded.

**Grant programs** (Sections 50751 and 50723): Family First establishes or extends grant programs supporting foster family recruitment and retention, and evidence-based substance abuse-related services for parents. (Child welfare petitions have increased in recent years, with many experts attributing the “spike” to parental substance abuse, particularly of opioids.<sup>10</sup>)

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<sup>8</sup> This definition may include some programs that juvenile justice systems might think of as group homes, but a key distinction is whether there are foster parents who live in the home full time, or staff who work in shifts.

<sup>9</sup> For more information about this program see, Congressional Research Service, John H. Chafee Foster Care Program for Successful Transition to Adulthood. (January 15, 2019) <https://fas.org/sgp/crs/misc/IF11070.pdf>.

<sup>10</sup> Children’s Defense Fund, *The Family First Prevention Services Act: Historic Reforms to the Child Welfare System will Improve Outcomes for Vulnerable Children*, <https://www.childrensdefense.org/wp-content/uploads/2018/02/ffpsa-short-summary.pdf>.

**Implementation deadline:** Some pieces of the law were effective upon enactment, but the prevention and congregate care funding elements were effective as of October 1, 2019. (Extensions are available based on changes needed to be made in state legislation.) States may choose to delay compliance with the congregate care restrictions for up to two years (until October 1, 2021), but would then have to also delay the expanded use of funding for prevention services.

**Waivers:** States or counties who have Title IV-E waivers do not have to comply with any inconsistent provisions of Family First until their waivers expire (generally in September 2019, unless extended by law).<sup>11</sup>

## IMPLEMENTATION OF FAMILY FIRST AND FEDERAL GUIDANCE

**Timelines and state plans:** A recent news article reported that as of July 2019, at least 29 states intended to delay implementation and 10 states planned to begin implementation in October 2019. The article also stated that only the District of Columbia had submitted its Family First plan to the Children’s Bureau as of mid-June.<sup>12</sup> By late September 2019, Utah had publicly announced that it had also submitted its plan, and Kentucky and Arkansas had published theirs.<sup>13</sup>

**Older youth:** In September 2018 Senator Grassley and several other Senators sent a letter to HHS urging that implementation guidance meet the needs of older youth, including with regard to candidacy definitions, eligible prevention services, and definition of “pregnant and parenting youth.”<sup>14</sup>

**Clearinghouse/Evidence-Based Programs:** As of early September 2019 only a handful of programs have been rated as Promising, Supported, or Well-Supported by the Clearinghouse, and only three of those serve adolescents:<sup>15</sup> Multisystemic Therapy and Functional Family Therapy (both rated Well-Supported), and Trauma-Focused Cognitive Behavioral Therapy (rated Promising).<sup>16</sup> (Note that these services may already be covered by Medicaid, and that the Children’s Bureau has said that IV-E is the “payer of last resort,” meaning that title IV-E prevention funding can’t be claimed if another federal funding stream, or private insurance,

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<sup>11</sup> For more on Title IV-E waivers and Family First, see Chronicle of Social Change, *Waiver Push Uncertain as Family First Implementation Looms*, <https://chronicleofsocialchange.org/finance-reform/waiver-push-uncertain-as-family-first-implementation-looms/33114>. To learn about your state’s waiver use, see James Bell Associates/Children’s Bureau, *Profiles of the Active Title IV-E Child Welfare Waiver Demonstrations* [https://www.acf.hhs.gov/sites/default/files/cb/compiled\\_profiles.pdf](https://www.acf.hhs.gov/sites/default/files/cb/compiled_profiles.pdf).

<sup>12</sup> Chronicle of Social Change, *The Only Family First Plan Under Review Right Now* <https://chronicleofsocialchange.org/child-welfare-2/the-only-family-first-plan-under-review-right-now/36318>.

<sup>13</sup> Utah Department of Human Services, “Utah Submits Family First Act Prevention Plan Ahead of Oct. 1 Start Date” (September 4, 2019) <https://hs.utah.gov/portfolio-item/utah-submits-family-first-act-prevention-plan-ahead-of-oct-1-start-date-state-outlines-how-new-services-will-prevent-children-from-entering-foster-care>. (See Resources section below for links to Kentucky and Arkansas plans.)

<sup>14</sup> Office of U.S. Sen. Chuck Grassley, Grassley, *Senators Press HHS to Include Older Foster Youth in Implementation of Family First* <https://www.grassley.senate.gov/news/news-releases/grassley-senators-press-hhs-include-older-foster-youth-implementation-family>.

<sup>15</sup> Three others were for younger children, and/or only addressed parents’ substance abuse issues. These interventions could be relevant to justice-involved youth who are in foster care and are pregnant or parenting, and some could prevent delinquency later in life among young children who receive them now.

<sup>16</sup> Title IV-E Prevention Services Clearinghouse <https://preventionservices.abtsites.com/>.

would pay for it.<sup>17</sup> This may result in states with good Medicaid coverage benefiting less from this preventative funding.)<sup>18</sup>

- Clearinghouse ratings are based on studies with randomized or quasi-experimental group designs, meaning that there must be a group of youth/families receiving the intervention, and a comparison group receiving "treatment as usual" or no/minimal services (e.g., nominal services, such as a referral).<sup>19</sup> This provides a potentially insurmountable hurdle for effective local programs that cannot afford an expensive research study and/or have ethical concerns about serving only some of the youth who need their help, as required by a randomized trial. (Note that for the "promising" rating, studies using wait list members as a control group can also qualify.)
- The Children's Bureau has also developed a process for states to request transitional payments for programs which have not yet been rated by the Clearinghouse. Under this option, a state gathers and submits documentation to show that a program would be rated Promising, Supported or Well-Supported by the Clearinghouse, using their stated criteria, including evidence of effectiveness in studies with randomized or quasi-experimental group designs.<sup>20</sup>
- Family First also envisioned the Clearinghouse including Kinship Navigator programs but as of early September 2019, both of the Kinship Navigator programs in the Clearinghouse were rated "Does Not Meet Criteria" (with two others slated for future review).
- Motivational interviewing, which has been used by juvenile justice providers, is also currently under review.
- In August 2019 the Clearinghouse announced the next set of interventions to be reviewed. These included Multidimensional Family Therapy and Brief Strategic Family Therapy, both of which have been used to address delinquency and improve family functioning.
- The District of Columbia, the first jurisdiction to submit its Title IV-E prevention plan, included YVLifeSet as a proposed prevention service. YVLifeSet is the "largest intensive, evidence-informed, community-based, clinically- and youth-driven program model that helps emerging adults who are leaving the foster care, juvenile justice and mental health systems transition successfully to adulthood and one of the only programs to show positive impacts in a large, randomized, clinical trial."<sup>21</sup> The Prevention Services Clearinghouse has not yet rated YVLifeSet.

The Clearinghouse plans to add programs on a rolling basis, and individuals can sign up for e-mail updates at <https://preventionservices.abtsites.com/subscribe>.

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<sup>17</sup> Administration on Children, Youth and Families, *Program Instruction 18-09*. (November 30, 2018)

<https://www.acf.hhs.gov/sites/default/files/cb/pi1809.pdf>.

<sup>18</sup> Several states have expressed interest in braiding funding since Medicaid does not necessarily cover the full costs of these services, but (as of this writing) the Children's Bureau has not yet said whether IV-E funding could be used to cover the remainder of that cost.

<sup>19</sup> Title IV-E Prevention Services Clearinghouse. *Study Eligibility Screening and Prioritization*. <https://preventionservices.abtsites.com/review-process/sesp>.

<sup>20</sup> U.S. Department of Health and Human Services Administration on Children, Youth and Families, *Program Instruction 19-06* (ACYF-CB-PI-19-06). <https://www.familyfirstact.org/resources/acyf-cb-pi-19-06-transitional-payments-title-iv-e-prevention-and-family-services-and>.

<sup>21</sup> E-mail to author from Youth Villages, August 1, 2019.

**Candidacy:** In a November 2018 Program Instruction,<sup>22</sup> the Children's Bureau stated that they do not intend to define "candidate for foster care" or "imminent risk" of entering foster care beyond current definitions in statutes and regulations. This gives states more latitude to define candidacy for themselves, but also risks states being overly narrow in their definitions to avoid impermissible definitions.

**Chafee:** No new money was allocated for the Chafee expansion, so some states that already do not have enough funding to serve all eligible youth (e.g., California) are likely not going to elect to take the optional expansion. Others may opt to expand, and then use the expansion to advocate for state investments.

**Waivers:** Many states have used Title IV-E waivers to provide preventative services and other innovative approaches to child welfare, including providing alternatives to incarceration, or "step down" options for youth involved in juvenile justice systems.<sup>23</sup> These waivers will largely expire around the same time as states are implementing or planning implementation of Family First. In some cases, the funding changes under Family First could allow for some of the same services to be offered, but in others, waiver expiration may lead to significant additional child welfare changes (and loss of funding) that states are trying to address as they formulate their Family First plans.

**QRTPs:** Advocates have raised concerns that QRTPs with more than 16 beds might be classified as Institutions for Mental Diseases (IMDs), and therefore foster youth placed in them could be ineligible for Medicaid reimbursements. The Centers for Medicare & Medicaid Services issued a Q & A in September 2019, indicating that QRTPs over 16 beds could be IMDs with state Medicaid offices making those determinations based on the specifics of the QRTP and the relevant exceptions to the IMD rules.<sup>24</sup>

## FAMILY FIRST AND JUVENILE JUSTICE ADVOCACY

Youth involved in child welfare systems are more likely to experience justice system involvement, particularly youth placed in congregate care, who face a 2.5 times greater risk of delinquency.<sup>25</sup> Youth placed in congregate care also have worse educational outcomes, including a lower likelihood of graduating from high school.<sup>26</sup> Juvenile justice advocates should **support efforts to reduce inappropriate use of congregate care and increase prevention**

<sup>22</sup> ACYF-CB-PI-18-09 <https://www.acf.hhs.gov/sites/default/files/cb/pi1809.pdf>.

<sup>23</sup> Youth Law Center, *Title IV-E For Youth In The Juvenile Justice System* <https://ylc.org/wp-content/uploads/2018/12/Title-IV-E-for-Youth-in-the-Juvenile-Justice-System-2.pdf>.

<sup>24</sup> Centers for Medicare & Medicaid Services, *Qualified Residential Treatment Programs (QRTP) and Serious Mental Illness (SMI) and Serious Emotional Disturbance (SED) Demonstration Opportunity Technical Assistance Questions and Answers* (September 20, 2019).

[https://www.familyfirstact.org/sites/default/files/CMS\\_QRTP%20Technical%20Assistance\\_09.20.19.pdf](https://www.familyfirstact.org/sites/default/files/CMS_QRTP%20Technical%20Assistance_09.20.19.pdf) For more background on this issue, see National Association for Children's Behavioral Health letter to U.S. Senate Committee on Finance (Feb. 16, 2018).

<https://www.finance.senate.gov/imo/media/doc/National%20Association%20for%20Children's%20Behavioral%20Health.pdf>

<sup>25</sup> Ryan, J. P., et al, *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects* (in *Children and Youth Services Review*, 30, 1088-1099) <https://doi.org/10.1016/j.childyouth.2008.02.004>.

<sup>26</sup> Casey Family Programs, *What are the outcomes for youth placed in congregate care settings?* <https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/>.

**services**—including establishing a comprehensive continuum of community-based services—in child welfare as a way to reduce the number of youth entering the juvenile justice system, and in order to achieve better outcomes for youth in their communities. Advocates should also leverage conversations and reforms happening around Family First to **identify and address gaps in the continuum of needed services for youth and families** in their communities and to highlight the **importance of keeping youth in families**. (Not all needed services will be eligible for the new prevention funding, so this advocacy may need to go beyond Family First to look at other funding streams.) Finally, advocates should **actively engage in Family First implementation planning** in their community to ensure that juvenile justice and crossover youth issues are identified and addressed, and must closely **watch for and respond to any increases in secure confinement** as changes to congregate care take place.

Strong advocacy from the youth justice community can help ensure that Family First is implemented in ways that allow justice-involved youth to equitably access the benefits of the law and avoid negative unintended consequences. Steps juvenile justice advocates could consider--or are already taking--include:

**Leveraging opportunities specific to Family First implementation:**

- Connect with child welfare advocates in your community to learn about efforts already in place to plan for Family First implementation and how you can get involved. Take advantage of any opportunity your child welfare agency offers for public comment or discussions of child welfare planning and policy.
  - Learning how your jurisdiction currently uses Title IV-E and Medicaid to pay for services for youth involved with child welfare and juvenile justice may help you engage more effectively in these conversations.
  - Family First also has many potential impacts on youth experiencing or at risk for homelessness, and the providers and systems that serve them. Consider engaging with advocates in that field as well.
- Encourage state agencies to collect (and publish) more and better data to identify changes in juvenile justice involvement, dual system involvement, and youth placements.

In addition to Family First and Title IV-E, numerous other federal funding streams can be used to prevent juvenile justice involvement or to provide services to justice-involved youth, including:

- Health funding through Medicaid/CHIP and SAMHSA grants
- Workforce and education grants (WIOA, Pell Grants)
- VOCA/crime victim funds
- Community Development Block Grants

Source: Urban Institute, *Promoting a New Direction for Youth Justice: Strategies to Fund a Community-Based Continuum of Care and Opportunity*.

<https://www.urban.org/research/publication/promoting-new-direction-youth-justice-strategies-fund-community-based-continuum-care-and-opportunity>.



(This could include starting to collect, analyze, and publish data that will ultimately be required by Family First and JJDPa well ahead of federal requirements.)

- This should be among the first steps advocates take, as having this data can ensure effective advocacy on all of the points below.
- Data captured should include where youth who were previously in group homes are going (e.g., to a family or QRTP vs. to a juvenile justice placement).
- Advocate for the state's definition of "candidacy" to be inclusive of youth who are involved in the youth justice system or are at significant risk for involvement (including by identifying common pathways to child welfare/juvenile justice crossover and ensuring the "candidate" definition addresses them).
  - While this definition should be broad enough to provide preventative services to avoid child welfare or juvenile justice involvement, it should be crafted carefully to avoid net-widening and to avoid worsening racial and ethnic disparities.
- In states that have extended foster care, advocate for the state's definition of "candidacy" to include youth between ages 18 and 21 who left foster care but are eligible to re-enter. (While agency guidance on including these youth has not been clear, the intent of the law supports inclusion.)
- Support advocacy to quickly and broadly expand the number and range of services that qualify for prevention funding under the Clearinghouse, with an emphasis on additional interventions appropriate for adolescents and their families and programs that have demonstrated effectiveness in reducing delinquency (e.g., ask the state to participate in advocacy aimed at the federal government on this issue, or support efforts already underway).
  - As an example, in July 2018 Oregon's Family First work group submitted comments<sup>27</sup> to ACF regarding the Clearinghouse and asked for services for juvenile justice-involved families to be prioritized for consideration due to the similarity/overlaps in population between youth involved in the child welfare and juvenile justice system.
  - This includes advocating for more flexibility in the evidence requirements to allow states to fund interventions developed and delivered by adults with similar backgrounds and lived experiences to the youth they serve, in culturally competent ways.
  - Also advocate for your state, community funders, and local universities to support research to expand the evidence base for promising local programs.
- Advocate for your jurisdiction's Family First implementation planning to advance policies and practices that promote equity and reduce racial and ethnic disparities, and overrepresentation of LGBTQ youth, in child welfare and juvenile justice systems.
  - This includes ensuring that new policies/procedures are written in equitable ways, and also using implementation planning as an opportunity to address current disparities.

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<sup>27</sup> Available at <https://www.oregonlegislature.gov/gelser/ffipwg/FFIP%20Work%20Group%20FFPSA%20Clearinghouse%20NPRM%20Comments.pdf>.

- QRTPs offer opportunities for much more oversight than traditional juvenile justice placements; ensure that all of the oversight requirements are followed for every youth for whom Title IV-E funding is claimed, including those placed through the juvenile justice system. Encourage your juvenile justice agency to consider similar oversight mechanisms to ensure that youth are placed in the least restrictive appropriate environment, and that the necessity for residential placement is revisited regularly for each young person.
- As discussed above, Family First’s congregate care restrictions do not apply to programs for pregnant and parenting youth, youth who have experienced or are at risk for sex trafficking, and supervised independent living programs. To the extent that high quality programs of this nature exist in your community (or are developed as a result of Family First), consider whether they could serve as alternatives to incarceration for youth in appropriate circumstances. (See discussion of these settings in “unintended consequences section below.)
- Advocates should encourage states and the federal government to invest additional resources in foster parent recruitment. (Currently only \$8 million is allocated for the grant program on foster parent recruitment that is part of Family First, compared to \$35 million allocated by California alone to support its counties in these efforts.)<sup>28</sup> Youth who have juvenile justice system involvement are often considered more “difficult to place” and having appropriate family environments for youth who cannot live safely at home will be essential to reducing congregate care and incarceration.

**Minimizing risks of negative unintended consequences:**

- Encourage your state, as part of its state plan and required juvenile justice certification, to outline and act on specific steps to avoid increased juvenile justice system involvement. Such requirements should be included in any state legislation and policy that is enacted related to Family First and could include:<sup>29</sup>
  - Requiring data collection twice annually on the number of youth who are placed in out-of-home care pursuant to a delinquency adjudication and their placement type; the number of dual system involved youth; the services provided and placements used as part of delinquency dispositions.
  - Requiring that a cross system committee be appointed to review the data and develop an annual report on the impact of Family First implementation on dual system involvement and include any recommendations to ensure that that implementation will not result in an increase in juvenile justice system involvement or dual system involvement. (To the extent possible, this report should also include qualitative information from system stakeholders, service providers, and youth on trends and common issues they are seeing, and their recommendations.)

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<sup>28</sup> Heather Adams/Chronicle of Social Change, “California’s \$140 Million Bet on Foster Parent Recruitment,” <https://www.fostercarecapacity.com/stories/californias-100-million-bet-on-foster-parent-recruitment>.

<sup>29</sup> The recommendations contained in the following two bullets were contributed by the Juvenile Law Center (JLC) and also appear in the JLC-co-authored document “Implementing the Family First Prevention Services Act,” available at [www.childrensdefense.org/implementing-family-first](http://www.childrensdefense.org/implementing-family-first).

- Monitor juvenile justice placements carefully to identify any uptick in residential, particularly secure placements, and call public attention to this issue if this becomes a problem.
- Follow state child welfare and juvenile justice funding closely and encourage policymakers to direct funds saved by Family First to essential services that can prevent system involvement (or incarceration) but don't qualify for IV-E funding. (The Maintenance of Efforts requirements in Family First can support this type of advocacy.)<sup>30</sup>
  - Learn how your state plans to address any shortfalls in funding due to Title IV-E waiver expiration or Family First funding changes, and advocate for solutions that have the least possible negative impact on underserved youth and families.
  - Make sure analyses of different services and placement options take into account the high costs of juvenile prisons.
- Use discussions around pathways to child welfare involvement to highlight the inappropriateness of using the juvenile justice system to respond to behaviors that are primarily about family needs (e.g., younger children, youth who run away, or youth with charges that stem from family conflict).
- Ensure that judicial education around Family First also highlights the dangers of incarceration, and local opportunities to safely serve youth in their own homes and communities. (This may be particularly important to combat incorrect beliefs that locked placements will “protect” youth from exploitation and victimization.)
- Attorneys for youth in the child welfare and juvenile justice systems should engage in zealous advocacy to ensure that their clients are placed in the least restrictive environment, and attorneys should support systemic advocacy to ensure that there is a full continuum of care available to all youth.
- Ensure that child welfare agencies do not close a youth's case when they enter the juvenile justice system. (Some jurisdictions used to do this automatically as a matter of policy, but the practice has declined in recent years.) Keeping the case open ensures that the youth and their family can take advantage of the benefits and services Family First and other child welfare laws confer, while or after they are involved in juvenile justice, and lowers the risk of youth exiting juvenile justice into homelessness. This is particularly important in states that have extended the age of child welfare eligibility and benefits beyond age 18.
- Ensure that the “exceptions” to congregate care restrictions (e.g., trafficking and pregnant and parenting programs) are not inappropriately used, and that all youth who can be safely kept in their own homes (or, failing that, a family foster home) are able to avoid unnecessary placement in congregate care, in alignment with Family First's goals. Due to implicit and systemic biases, girls of color may be particularly at risk for unnecessary congregate care placements.
  - Avoiding this unintended consequence may require a combination of policy safeguards around placement decisions, data collection and analysis around

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<sup>30</sup> Section 50711 of Family First (which addresses prevention services) says that “If a State elects to provide services and programs specified in paragraph (1) for a fiscal year, the State foster care prevention expenditures for the fiscal year shall not be less than the amount of the expenditures for fiscal year 2014 (or, at the option of a State described in subparagraph (E), fiscal year 2015 or fiscal year 2016 (whichever the State elects)).”

gender, sexual orientation, and race and ethnicity disparities in placements, and provision of education and support for parents and foster/kin caregivers on the needs of youth who are pregnant or parenting or have experienced trafficking.

**Broader advocacy opportunities:**

- Advocate for any appropriate new community-based interventions that are introduced in your jurisdiction to be available to youth involved in the juvenile justice system as well (even if Family First/Title IV-E funding cannot be used, advocates should ask juvenile justice agencies to use these services as a more effective and less expensive alternative to incarceration). Consider whether Title V funds can support some of these services under the reauthorized JJDP A,<sup>31</sup> and ensure your state is using Medicaid as effectively as possible to fund needed services as part of its continuum of care.
- Work closely and collaboratively with child welfare advocates to bring about needed changes. Lack of cross-system collaboration between juvenile justice and child welfare has been cited as a potential barrier to implementing both Family First and JJDP A in the ways that would best serve children and youth, so advocates should lead by example and encourage system stakeholders to work collaboratively as well.
- As Family First encourages child welfare systems to reduce the inappropriate use of out-of-home care, particularly congregate care, focus on the benefits of providing services in families and communities, and *push for these same conversations to occur in juvenile justice service delivery*. (Consider offering cross-system educational opportunities, as having child welfare and juvenile justice stakeholders in the same rooms and hearing the same messages can be quite valuable.) Because Title IV-E funds can continue to be used to support family placement settings (e.g., family foster homes and kinship care), advocate for IV-E funds to be used by your juvenile justice system to provide family-based settings where they are the least restrictive setting and when they can serve as a path to a return home. Recognizing that many jurisdictions struggle to recruit and retain foster families for older youth, particularly those with juvenile justice involvement, push for additional efforts to be made in this area by both systems, in collaboration if possible (e.g., targeted recruitment, additional training and support, joint licensing so that the same families can take youth from either system).
- Advocate for an immediate, short-term increased state investment in preventive and community-based services for youth at risk for or involved with the child welfare and/or juvenile justice systems to fill any gaps created during Family First’s initial implementation. Although Family First should ultimately result in better outcomes for child welfare-involved children and youth, even proponents of the law acknowledge that in the short term, implementation will be costly and difficult for states, and may result in a lack of suitable placements for youth as congregate care federal funding will disappear before the additional prevention services would result in the expected reductions in the need for out-of-home care. This disconnect will largely be felt by

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<sup>31</sup> Since FY2015, Title V funds have been earmarked for specific types of programs, but a wider range of grant-based services are expected to be available under the newly reauthorized JJDP A. For more information see Act4JJ, Juvenile Justice and Delinquency Prevention Act (JJDP A) Fact Sheet Series: Funding. <http://www.act4jj.org/sites/default/files/resource-files/Funding%20Fact%20Sheet%20-%20FINAL.pdf>.

adolescents, who could potentially be at risk for justice involvement, homelessness, or other issues if their needs are not met by the child welfare system. Advocates should push for short-term investments to address these gaps, tied specifically to needs and common barriers in their jurisdictions and including seed money to start new programs, or research funding to build the evidence base for existing services.

## LEVERAGING FAMILY FIRST TO PROMOTE EQUITY

*"Family First does not advance equity on its own; states must be intentional about reducing existing disproportionalities and disparities." -- Center for the Study of Social Policy*

Family First can be an opportunity to advance equity for youth involved in the child welfare and juvenile justice systems. To reach this goal, the Center for the Study of Social Policy recommends:

- Engaging community members (youth and families who have been system-involved), service providers, and cross-sector partners (e.g., public health, education) in planning.
- Developing a continuum of prevention services that include services that are a good "fit" for the youth and families in your community, including interventions that have an evidence base already, and those that could build one. (Breaking down data by race and ethnicity, and sexual orientation and gender identity, as well as by any special needs, can help identify programs that work for all members of your community.)
- Investing in research on promising programs already being implemented in communities of color, or with LGBTQ or gender-nonconforming youth, and suggesting relevant programs for inclusion in the Clearinghouse.
- Ensuring that reductions in congregate care equitably move *all* youth into family settings (rather than unnecessary placement in QRTPs or pregnant and parenting youth/trafficking programs). This includes intentionally recruiting and supporting foster parents for youth who disproportionately experience group care (e.g., older youth, youth of color, LGBTQ youth, youth with disabilities).

Source: Annie E. Casey Foundation/William T. Grant Foundation, *Promoting Equitable Outcomes With the Family First Prevention Services Act* (Webinar) <https://www.aecf.org/blog/webinar-offers-strategies-for-maximizing-equity-with-the-family-first-act/>.

## CROSSOVER YOUTH AND FAMILY FIRST

Youth involved in child welfare systems have delinquency petition rates 47% higher than other youth.<sup>i</sup> Research has also found that children in out-of-home placements were twice as likely to engage in delinquent behaviors as youth who received in home services.<sup>ii</sup> Research conducted based on youth involved in the Los Angeles County child welfare system also "report[ed] that the relative risk of delinquency is approximately two and one half times greater for adolescents with at least one group home placement as compared to similar youth in other foster care settings."<sup>iii</sup> Youth involved in the child welfare system are also detained at different rates than their peers, due to "foster care bias."<sup>iv</sup> Additionally, while youth of color are disproportionately represented in both the child welfare and juvenile justice systems, there is an even greater disparity in crossover rates. One study, for example, found that African American youth in the child welfare system were twice as likely to have been arrested as their white child welfare peers.<sup>v</sup> When asked about Family First's implications for juvenile justice, advocates identified several common situations that can lead to dual system involvement that could potentially be addressed by Family First:

- Youth in failing guardianship or adoptive placements may become justice-involved due to "ungovernability," "disorderly conduct," or similar charges. States with an appropriate definition of "candidate for foster care" would be able to offer preventative services to those families.
- Youth who are in state custody, or in detention, may not be able to return home (due to safety concerns or family refusal). This could also be an opportunity for preventative services under Family First, but there is also a risk that these situations will be made harder as non-secure group homes close.
- Putting families "on the radar" of public systems through preventative services could lead to both additional child abuse and neglect petitions and youth arrests, in some cases for the same youth.

Note that in some cases state law or agency policy might need to change to address these issues, particularly in jurisdictions where juvenile justice and child welfare are housed in different agencies.

i. Georgetown University Center for Juvenile Justice Reform/American Public Human Services Association, Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems [https://cjr.georgetown.edu/wp-content/uploads/2015/03/BridgingTwoWorlds\\_2008.compressed.pdf](https://cjr.georgetown.edu/wp-content/uploads/2015/03/BridgingTwoWorlds_2008.compressed.pdf) (pg. 34)

ii. Ibid, page 35.

iii. Ibid, page 36.

iv. Vera Institute of Justice, Reducing The Foster Care Bias In Juvenile Detention Decisions: The Impact of Project Confirm; Ryan, et al, Maltreatment and delinquency: Investigating child welfare bias in juvenile justice processing <https://www.sciencedirect.com/science/article/pii/S0190740907000655>

v. Georgetown University Center for Juvenile Justice Reform/American Public Human Services Association, Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems, page 38.

## FAMILY FIRST AND THE JJDP

The same year that Family First passed Congress and was signed into law, the cornerstone federal law that protects children in the youth justice system, the Juvenile Justice & Delinquency Prevention Act (JJDP), was reauthorized. The Juvenile Justice Reform Act (HR 6964)<sup>32</sup> went into effect October 2019 with some of the updated provisions being phased in through 2021. States will need to comply with the new requirements of the law (under Title II),<sup>33</sup> or face a financial penalty to their federal funding. In addition, there were significant changes to Title V, prevention services, in youth justice that include a refocus from prevention to PROMISE<sup>34</sup> (Prison Reduction through Mentoring, Intervention, Supports & Education), and significantly expands the services available to prevent delinquency. The Act was authorized at \$176M annually for fiscal years 2019-2023. An overview of the relevant provisions of the JJDP is included in [Appendix A](#), but the JJDP and Family First have several important intersections:

### **Common Values between Family First & JJDP**

Similar to Family First, the newly reauthorized JJDP also emphasizes the value of keeping youth in their homes and families, over out-of-home placements and incarceration. Other common values between the two Acts include: commitment to evidence-based and promising practices, increasing access to education and workforce development opportunities, and a focus on prevention.

### **Changes to the Deinstitutionalization of Status Offenders Core Protection:**

The JJDP reauthorization changed the requirements for securely confining youth who commit non-criminal offenses, particularly through the use of “valid court orders.” The tightening of this law may help decrease the likelihood that youth in the child welfare system who come in contact with the law based on family needs or inter-family conflicts will experience the disruption and trauma associated with secure detention. It may, however, also increase the need for foster family settings equipped to meet the needs of adolescents.

### **Increased Opportunities for Prevention Programs:**

The JJDP significantly expands the types of delinquency prevention programs that qualify for funding under Title V, allowing for a broader, more holistic approach to addressing the needs of youth who have been in contact with the justice system and preventing delinquency. Previous iterations of the JJDP defined prevention programming narrowly, and included substance abuse prevention programs, tutoring and remedial education, mental health and recreation services, youth leadership and development activities, job training programs within that definition. Furthermore, Title V explicitly lists youth involved in the child welfare system as a priority. These categories allow innovative, evidence-based and promising programs to access funding that had previously been out of reach; and may help fund gaps that emerge as a

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<sup>32</sup> <https://www.congress.gov/115/bills/hr6964/BILLS-115hr6964enr.pdf>.

<sup>33</sup> Congressional Research Service. Juvenile Justice and Delinquency Prevention Act (JJDP) Formula Grant Reauthorization. (March 18, 2019) <https://crsreports.congress.gov/product/pdf/IN/IN11076>.

<sup>34</sup> Act4JJ. *Juvenile Justice and Delinquency Prevention Act (JJDP) Fact Sheet Series: Title V: From Prevention to Promise* [http://www.act4jj.org/sites/default/files/resource-files/Title%20V%20Fact%20Sheet\\_0.pdf](http://www.act4jj.org/sites/default/files/resource-files/Title%20V%20Fact%20Sheet_0.pdf).

result of the changes to Family First. It should be noted that Title V grants are competitively bid to *local* jurisdictions, who create local policy boards to oversee the implementation of efforts.<sup>35</sup> There is a great opportunity for both child welfare and youth justice-involved families, service providers, and advocates to cooperate for this funding.

**Racial and Ethnic Disparities:**

The JJDPa also included significant provisions regarding racial and ethnic disparities in the juvenile justice system (see Appendix A for a summary). Although Family First does not address racial and ethnic disparities explicitly, it does raise numerous equity considerations (see box above).

**Emphasis on Re-entry planning:**

To support the retention of youth in their families and home communities, and to ease transition from out-of-home placements, the new provisions in the JJDPa focus on ensuring that justice-involved youth are protected. This includes provisions around facilitating the transition to community schools after incarceration and development of re-entry plans for youth returning to their communities. States may wish to work collaboratively with education systems and community providers of aftercare services to address these issues and the QRTP aftercare/transition requirements in Family First to avoid duplication of efforts and ensure parity of services between both systems.

Similar efforts to ensure that JJDPa and Family First are implemented in complementary ways should be undertaken for all of the provisions discussed above. This will help states ensure that youth involved in both systems are getting the full benefit of each law, and could avoid potential negative unintended consequences as a result of these systems (which serve many of the same youth) being viewed and changed in isolation.

*This resource was prepared for Act4JJ by Lisa Pilnik on behalf of Youth First. We appreciate the contributions and feedback from the Campaign for Youth Justice, Coalition for Juvenile Justice, Juvenile Law Center, Youth Law Center, Youth Advocate Programs, and BoysTown.*

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<sup>35</sup> As noted above, since FY2015, Title V funds have been earmarked for specific types of programs, but a wider range of grant-based services are expected to be available under the newly reauthorized JJDPa.



## ADDITIONAL RESOURCES

### General resources/Overviews of Family First

National Conference of State Legislatures, *Family First Updates And New Legislation*

<http://www.ncsl.org/research/human-services/family-first-updates-and-new-legislation.aspx>

FamilyFirstAct.org, <https://www.familyfirstact.org/>

Children's Defense Fund, *The Family First Prevention Services Act: Historic Reforms to the Child Welfare System will Improve Outcomes for Vulnerable Children* <https://www.childrensdefense.org/wp-content/uploads/2018/08/family-first-detailed-summary.pdf>

Children's Defense Fund, *Family First Prevention Services Act 2018 – Implementation Timeline*, <https://www.childrensdefense.org/wp-content/uploads/2018/08/ffpsa-implementation.pdf>

Alliance for Children's Rights, *Family First: Responding to the Shifting Landscape of Child Welfare* (Webinar) <https://vimeo.com/351263198>

### State/Local Examples

DC Child and Family Services Agency Family First Prevention Work Group, *Title IV-E Prevention Program Five Year Plan Executive Summary*

[https://www.familyfirstact.org/sites/default/files/DC\\_CFSA-FFPSA\\_Title-IV-E\\_Prevention-Plan\\_WG\\_Executive-Summary\\_4.10.19%20%281%29.pdf](https://www.familyfirstact.org/sites/default/files/DC_CFSA-FFPSA_Title-IV-E_Prevention-Plan_WG_Executive-Summary_4.10.19%20%281%29.pdf)

Virginia, *Implementation of the Family First Prevention Services Act* (Also see [familyfirstvirginia.com](http://familyfirstvirginia.com)) [http://familyfirstvirginia.com/downloads/VDSS\\_FFPSA\\_implementation\\_Plan.pdf](http://familyfirstvirginia.com/downloads/VDSS_FFPSA_implementation_Plan.pdf)

Colorado Family First Prevention Services Act Advisory Committee

<https://colorado.gov/pacific/cdhs-boards-committees-collaboration/colorado-family-first-prevention-services-act-advisory-committee>

Oregon Legislature, *Family First Implementation and Policy Work Group*

<https://www.oregonlegislature.gov/gelser/Pages/Family-First.aspx>

Arkansas Title IV-E Prevention Program: Five-Year Plan: 2020-2024

<https://www.familyfirstact.org/sites/default/files/AR%27s%20Five%20Year%20Title%20IV-E%20Prevention%20Plan.pdf>

Kentucky Cabinet for Health and Family Services, Department for Community Based Services, *Title IV-E Prevention Plan*

[https://www.familyfirstact.org/sites/default/files/KY%20Cabinet%20for%20Health%20and%20Family%20Services\\_Prevention%20Plan%208.23.19%20FINAL%20with%20watermark.pdf](https://www.familyfirstact.org/sites/default/files/KY%20Cabinet%20for%20Health%20and%20Family%20Services_Prevention%20Plan%208.23.19%20FINAL%20with%20watermark.pdf)

Utah Department of Human Services, *Utah Submits Family First Act Prevention Plan Ahead of Oct. 1 Start Date*

<https://hs.utah.gov/portfolio-item/utah-submits-family-first-act-prevention-plan-ahead-of-oct-1-start-date-state-outlines-how-new-services-will-prevent-children-from-entering-foster-care>

Nebraska DHHS, *Family First Prevention Services Act*  
<http://dhhs.ne.gov/Pages/Family-First.aspx>

### **Prevention/Candidacy**

Title IV-E Prevention Services Clearinghouse <https://preventionservices.abtsites.com/>

Center for the Study of Social Policy, *Responsibly Defining Candidacy within the Context of FFPSA: Five Principles to Consider* <https://cssp.org/wp-content/uploads/2019/04/Policy-Responsibly-Defining-Candidacy-FINAL.pdf>

Public Consulting Group, *Family First Prevention Services Flow Chart*  
[https://www.familyfirstact.org/sites/default/files/Family%20First%20Prevention%20Services%20Flow%20Chart\\_20190325%20V2.pdf](https://www.familyfirstact.org/sites/default/files/Family%20First%20Prevention%20Services%20Flow%20Chart_20190325%20V2.pdf)

Public Consulting Group, *Family First Prevention Services Act: Maintenance of Effort Requirement*  
[https://www.familyfirstact.org/sites/default/files/HS\\_MOE\\_Family%20First%20Prevention%20Services%20Act.pdf](https://www.familyfirstact.org/sites/default/files/HS_MOE_Family%20First%20Prevention%20Services%20Act.pdf)

### **Congregate Care**

Juvenile Law Center/Youth Law Center, *Advocating for the Most Connected Placement: A Guide to Reducing the Use of Group Care* <https://ylc.org/wp-content/uploads/2019/05/Connected-Placements-Toolkit.pdf>

Child Welfare Capacity Building Collaborative. *Working With Children and Youth With Complex Clinical Needs: Strategies in the Safe Reduction of Congregate Care.* <https://capacity.childwelfare.gov/states/focus-areas/foster-care-permanency/congregate-care-guide/>

Building Bridges Initiative  
<https://www.buildingbridges4youth.org/>

### **Equity**

Center for the Study of Social Policy, *Seizing the Opportunity Ten Ways to Advance Equity and Promote Well-Being through the Family First Prevention Services Act (FFPSA)* <https://cssp.org/wp-content/uploads/2018/12/Seizing-the-Opportunity-FFPSA.pdf>

### **Funding and Continuum of Care Considerations**

Center for the Study of Social Policy, *Supporting All Families: Financing Streams to Support Prevention Programs*  
<https://cssp.org/wp-content/uploads/2019/05/Policy-Financing-a-Comprehensive-Prevention-Continuum.pdf>

Urban Institute, *Promoting a New Direction for Youth Justice: Strategies to Fund a Community-Based Continuum of Care and Opportunity* <https://www.urban.org/research/publication/promoting-new-direction-youth-justice-strategies-fund-community-based-continuum-care-and-opportunity>

Casey Family Programs, *Medicaid and Family First: Medicaid 201.* (Webinar) (May 21, 2019)  
<https://www.casey.org/medicaid-webinar-series/>

Centers for Medicare & Medicaid Services, *Qualified Residential Treatment Programs (QRTP) and Serious Mental Illness (SMI) and Serious Emotional Disturbance (SED) Demonstration Opportunity Technical Assistance Questions and Answers*

[https://www.familyfirstact.org/sites/default/files/CMS\\_ORTP%20Technical%20Assistance\\_09.20.19.pdf](https://www.familyfirstact.org/sites/default/files/CMS_ORTP%20Technical%20Assistance_09.20.19.pdf)

Youth Law Center, *Title IV-E For Youth In The Juvenile Justice System* <https://ylc.org/wp-content/uploads/2018/12/Title-IV-E-for-Youth-in-the-Juvenile-Justice-System-2.pdf>

University of Southern Maine and the University of Maine School of Law, *Place Matters: Aligning Investments in a Community-Based Continuum of Care for Maine Youth Transitioning to Adulthood*

<https://usm.maine.edu/sites/default/files/cutler/Place%20Matters%20CoC%20FINAL.pdf>

### **Special Populations**

Center for the Study of Social Policy, *Family First Prevention Services Act: Pregnant & Parenting Youth FAQs*

<https://cssp.org/wp-content/uploads/2018/10/Family-First-FAQs.pdf>

## Appendix A

### SUMMARY OF JJDP A PROVISIONS RELEVANT TO FAMILY FIRST

#### **Common Values between Family First & JJDP A**

The purpose section of JJDP A states, “[The JJDP A will] support a continuum of evidence based or promising programs (including delinquency prevention, intervention, mental health, behavioral health and substance abuse treatment, family services and services for children exposed to violence) that are trauma informed, reflect the science of adolescent development and are designed to meet the needs of at-risk youth and youth who come in contact with the justice system.”

#### **Changes to the Deinstitutionalization of Status Offenders Core Protection:**

Under the reauthorization,<sup>36</sup> status offender is now defined as “a juvenile who is charged with or who has committed an offense that would not be criminal if committed by an adult.” Common examples of these behaviors include running away from home, skipping school, willful defiance, and being out after curfew. Generally speaking, states are not permitted to detain youth for engaging in status offense behaviors. An exception continues to exist in the law known as the valid court order (VCO) exception. This means that if a judge issues an order with conditions attached to a child who was brought before them on a status offense, the child can be incarcerated if they don’t follow the judge’s orders.

The new law clarifies, for the first time, what constitutes a valid court order for purposes of detaining a young person charged with a status offense. The Act states that if a court determines a young person charged with a status offense should be placed in a secure detention facility or correctional facility for violating a valid court order, the court must issue a written order that contains the following information:

- The court must identify the valid court order that has been violated;
- The court must specify the factual basis for determining that there is “reasonable cause to believe that the status offender has violated such order”;
- The court must include “findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile”; and
- The court must specify the length of time, not to exceed 7 days, that the young person may remain in a secure detention facility or correctional facility, and must include a plan for their release from the facility.

In addition, a child may no longer be incarcerated multiple times under the same court order; and states must report annually to the federal government on the uses of the VCO exception, number of detentions based on VCO violations, underlying reason for the violation, and the average length of time youth are detained.

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<sup>36</sup> Act4JJ. Juvenile Justice and Delinquency Prevention Act (JJDP A) Fact Sheet Series: Core Protections: Deinstitutionalization of Status Offenders. <http://www.act4jj.org/sites/default/files/resource-files/Deinstitutionalization%20of%20Status%20Offenders%20-%20FINAL.pdf>

### **Increased Opportunities for Prevention Programs:**

Prevention programs in JJDPAs fall under Title V of the Act, and were authorized as “not more than” \$96m of the \$176m authorized by the law. Under H.R. 6964, 29 different categories of delinquency prevention programs are now eligible for Incentive Grants for Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education (Youth PROMISE) Grants. In addition to the previous categories covered under Title V, new categories include **home visits, family stabilization programs, adoption assistance, parenting skills training, conflict resolution training**, summer job programs, restorative justice programs, and after school programs. As mentioned above, youth involved in child welfare systems are listed as a priority group in Title V.

### **Emphasis on Re-entry planning, Education, and Vulnerable Populations:**

To support the retention of youth in their families and home communities, and to ease transition from out-of-home placements, the new provisions in the JJDPAs focus on ensuring that justice-involved youth are protected.

It is well established that the best way to keep youth on track academically is to continue their education in the community. The reauthorized JJDPAs require states to provide assurances in their state plans that they will collaborate with the State Educational Agency to create a plan to facilitate educational reentry.<sup>37</sup> Specifically, state plans must support timely transfer of education records, including electronic records if available, from detention or treatment facilities to the student’s next school. In addition, young people must be able to earn full or partial credit for coursework successfully completed while in custody, and those credits must transfer to the receiving school and count toward high school graduation.

The JJDPAs include new language regarding reentry plans for youth who are returning to the community.<sup>38</sup> This is a critically important step to ensure that young people exit the justice system to safe, stable, and secure housing. Research has shown that 44% of young people who are experiencing homelessness report that they have also spent time in a jail or detention facility.<sup>39</sup> States must describe how their planning for youth will include a written case plan based on an assessment of the young person’s needs which takes into account:

- Pre-release and post-release plans for the youth;
- The living arrangement to which the youth will be discharged; and
- Any other plans developed for the youth based on an individualized assessment.

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<sup>37</sup> Act4JJ. Juvenile Justice and Delinquency Prevention Act (JJDPAs) Fact Sheet Series: Educational Reentry.

<http://www.act4jj.org/sites/default/files/resource-files/2019%20JJDPAs%20Fact%20Sheet%20Educational%20Reentry%20JLC%20ELC.pdf>

<sup>38</sup> Act4JJ. Juvenile Justice and Delinquency Prevention Act (JJDPAs) Fact Sheet Series: Reentry.

<http://juvjustice.org/sites/default/files/ckfinder/files/Reentry%20Fact%20Sheet%20.pdf>

<sup>39</sup> Administration on Children, Youth and Families, Family and Youth Services Bureau: Street Outreach Program Data Collection Project Final Report (April 2016).

Finally, the JJDPa, also focuses on monitoring and reducing the impact of any intervention on racial and ethnic disparities.<sup>40</sup> The JJDPa now requires states to:

- Establish or designate an existing coordinating body, composed of juvenile justice stakeholders, at the state, local, or tribal levels, to advise efforts by states, units of local government and Native American tribes to reduce racial and ethnic disparities.
- Identify and analyze data on race and ethnicity at decision points in state, local, or tribal juvenile justice systems to determine which points create racial and ethnic disparities among youth who come into contact with the juvenile justice system.
- Develop and implement a work plan with measurable objectives for policy, practice, or other system changes based on the needs identified in the data collection and analysis of racial and ethnic disparities.
- Include a tribal representative in State Advisory Groups when available or another individual with significant expertise in tribal law enforcement and juvenile justice in tribal communities. (This requirement only applies to states that have federally recognized tribes.)

Finally, JJDPa calls for protections for girls in the system, youth who have been trafficked or sexually exploited, and Tribal youth. Supporting programming and monitoring the over-representation of these youth in the justice system who are also dually-involved in child welfare, could provide valuable information as to where gaps exist in service provision. It should be noted that while LGBTQ youth are over-represented in the youth justice system, particularly youth of color, JJDPa fell short of adopting a non-discrimination policy inclusive of these youth--so the over-representation of justice-involved LGBTQ youth remains an urgent priority.

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<sup>40</sup> Act4JJ. *Juvenile Justice and Delinquency Prevention Act (JJDPa) Fact Sheet Series: Core Protections: Racial and Ethnic Disparities.* <http://www.act4jj.org/sites/default/files/resource-files/Racial%20and%20Ethnic%20Disparities%20Fact%20Sheet.pdf>.

## **FAMILY FIRST AND JUVENILE JUSTICE: BRIEF OVERVIEW**

Family First makes significant changes to federal funding of child welfare under Title IV-E of the Social Security Act. The biggest changes the law makes are to limit how and when Title IV-E funding can be used for congregate care and to now allow Title IV-E to be used for certain preventive services for some youth.

### **Potential benefits for youth justice:**

- Congregate (group) care has been linked to worse outcomes for youth, including higher levels of justice involvement, so keeping more youth in their homes or in family settings could reduce the number of youth crossing over from the child welfare system into juvenile justice.
- For youth placed in Qualified Residential Treatment Programs, an exception to the congregate care restrictions, there are additional oversight mechanisms and support requirements (e.g., family engagement and aftercare) that could also help prevent juvenile justice system involvement.
- The preventative services provided to youth and families could prevent foster care and possibly delinquency (and in fact, two of the already approved interventions, MST and FFT, are already widely used in juvenile justice).
- Family First also expands what funding can be used for Chafee Foster Care Program for Successful Transition to Adulthood, including giving states the option to serve older young adults.

### **Missed opportunities and concerns for youth justice:**

- The congregate care restrictions are raising concerns that as fewer group homes exist, more youth in delinquency cases will be placed in secure facilities.
- Due to limitations on how the funding for IV-E preventative services can be accessed, far fewer families will likely be served than advocates would hope, particularly in the short term. (Services can only be funded for “candidates” for foster care and a few other groups, the interventions must have significant research behind them, and IV-E is the last payer behind federal funding streams like Medicaid that are generally already covering the most “well-supported” evidence-based interventions.)
- There are concerns that the preventative services will lead to net-widening as more families are on systems’ radars.
- The Chafee expansion mentioned above broadened what the funds could be used for, but did not allocate additional dollars.

### **Avenues for advocacy:**

- Juvenile justice stakeholders should be at the table as states develop their implementation plans for Family First, ensuring that the opportunities highlighted above are realized, and that negative unintended consequences are avoided.

- Advocates should closely watch for changes in secure placements, and respond rapidly to any increases (this may involve policy advocacy, as well as supporting defense attorneys in their dispositional advocacy through research, etc.).
- Juvenile justice advocates (working collaboratively with child welfare advocates) should also support efforts to broaden the range of preventative services states may use Title IV-E to fund, and to ensure that Family First is implemented in ways that promote equity.

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