



A Call for **Judicial Leadership in** **Reshaping Child Welfare** in the United States

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Earlier this summer the Children's Bureau convened teams of up to ten individuals from every state, D.C., Puerto Rico, and the U.S. Virgin Islands to chart a new course for child welfare in the United States: strengthening families through primary prevention of child maltreatment and family disruption. The teams included representatives from the state child welfare agency, the legal and judicial community, and prevention partners. The main purpose of the meeting was to discuss and begin planning what child welfare system partners can do together to support primary prevention—to work upstream to address the root causes that make foster care necessary in the first place.

In some ways, primary prevention may be a concept that the legal and judicial community considers out of its purview, especially judges. It may be difficult to see the role of a judge in preventing the need for children and families to enter his or her courtroom. However, there is a critical and absolutely necessary role for judges in advancing primary prevention to prevent maltreatment. It is also clear that judges deal daily with the results of the lack of primary prevention nationally as reflected by increasing docket sizes, unmanageable attorney caseloads, multiple generations of the same family entering courtrooms, and children and families appearing in court with deep trauma histories and mental health and substance abuse challenges that have often gone unattended.

The combination of these factors means that families and children in the child welfare system require some of the most difficult and long-lasting efforts within the court system. They are complex, involve challenging social issues, and do not often lend themselves to bright line decision making. These difficulties are exacerbated by legal burdens that are vague, such as contrary to the welfare of the child, reasonable efforts, and of course, the best interest of the child. Implicit bias lurks as a constant threat to which all must remain vigilant, and the fear of making the wrong decision, one that may place a child in jeopardy of serious harm—or worse—is ever present. No one wants to see a child or family in the child welfare system experience tragedy. A concerted focus on primary prevention will help address the factors that leave families vulnerable, reduce the need for foster care, and help mitigate the vicious cycle with which we continue to struggle.

There are three key judicial strategies that can help disrupt the destructive cycle in which many families experience in the child welfare system: (1) mobilize judicial leadership to support and voice the importance of strengthening families to prevent child maltreatment, (2) ensure that reasonable efforts are truly made to prevent removal, and (3) where removal is necessary, ensure that reasonable efforts are truly made to finalize permanency plans. Each of the strategies require a strong judicial philosophy of and commitment to prevention.

Mobilizing judicial support for primary prevention requires judges to be strong voices for prevention outside of the courthouse. The National Council of Juvenile and Family Court Judges (NCJFCJ) has long been a proponent of the role of judges as leaders and conveners, and primary prevention is a topic in which both actions are vital. The status judges hold in their communities as leaders can have a powerful impact on bringing important community needs to light and bringing credibility to efforts that support families and increase parental resilience. Judges know firsthand the importance of programs and services that help children and families stay healthy and on the right track. Judges also regularly see the consequences of children and

families not receiving the support they need early on—consequences that may have been diverted had families received legal services, concrete supports, or other services sooner. Active judicial support for programs and approaches that serve families before crisis arise can have an enormous impact.

Once families do make it to court, there are two critical judicial determinations required under the law that judges can use as tools to prevent trauma to children and families: reasonable efforts to prevent removal and reasonable efforts to finalize the permanency plan. We invite the legal and judicial community to view these findings as incredibly important decisions that can forever change the trajectory of children's and parents' lives—as moments where we can choose to support families and reduce trauma to children. We invite the legal and judicial community, including attorneys for children, attorneys for parents, agency attorneys, and judges in particular, to view reasonable efforts determinations as tools and opportunities to promote family safety and family unity as opposed to exercises in compliance with statutory requirements.

Research and brain science make very clear that parent child separation is traumatizing and can have severe effects on healthy child development. As a field, we know such trauma may last a lifetime and is a powerful adverse childhood experience that can lead to long-term health, relational, and self-sufficiency challenges. It is also highly traumatic for parents and can be a trigger for relapse or decompensation for those that may be in recovery or struggling with substance abuse or mental health issues. Knowing these facts should compel all of us to take primary prevention very seriously. If we concentrate efforts and resources further upstream, we can stem the tide of children entering foster care. Reasonable efforts to prevent removal and to finalize the permanency plan are tools that are available to prevent unnecessary trauma and help make sure children and parents receive the support they need to stay safe, well, and together.

One of the most important reasonable efforts to finalize permanency plans and reduce unnecessary trauma to children is robust family time/visitation practice for children in foster care with their families. Judges can set the expectation and change both culture and practice by ordering high frequency, high quality and meaningful family time as a part of all court orders absent the presence of clearly identified, current safety concerns. Where clear safety concerns are identified, family time should continue as possible with supervision. Family time in the home, homes of family members, relatives, or home-like settings is one of the best ways to help parents practice and learn to parent more safely and effectively. Family time is the single most effective way to maintain the integrity of the parent child relationship when children are in out of home placement and a powerful way to “normalize” foster care and reduce trauma to children.

It is high time to take a different approach in child welfare in the United States; our children, families, and communities deserve better. We ask all judges to take a leadership role and do all that you can in your courtrooms and communities to demonstrate commitment to strengthening families, preventing maltreatment, reducing parent and child trauma, and interrupting the intergenerational cycles of vulnerability and disruption we have come to know so well.

NCJFCJ IN THE NEWS

- YOUTH TODAY** 6/5/2018
[David E. Stucki Elected Deputy-President of the Int'l Association of Youth & Family Judges & Magistrates](#)
- CNN** 6/21/2018
[Handcuffs, assaults, and drugs called 'vitamins': Children allege grave abuse at migrant detention facilities](#)
- THE OLYMPIAN** 6/22/2018
[Family separation a travesty to children](#)
- PSYCHOLOGY TODAY** 6/22/2018
[Damage of Separating Families](#)
- TIME** 6/27/2018
[I'm a Judge Who Decides if Children Should Be Separated from Abusive Parents. Here's How Trump's Immigration Policy Should Change](#)
- WESTWORD** 7/20/2018
[Biggest Challenges Facing Juvenile and Family Court Judges](#)
- DEPARTMENT OF JUSTICE** 7/24/2018
[Acting Director Katharine Sullivan of the Justice Department's Office on Violence Against Women Delivers Remarks at NCJFCJ Annual Conference](#)
- BUFFALO NEWS** 8/18/2018
[Shackling of 8-year-old in Family Court prompts outrage, new policy](#)
- GAINESVILLE TIMES** 10/3/2018
[How federal grants will help GBI, Drug Courts in opioid fight](#)



THE ROLE OF THE COURT IN IMPLEMENTING THE FAMILY FIRST PREVENTION SERVICES ACT OF 2018

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The Family First Prevention Services Act of 2018 provides States and Tribes opportunities to use federal funding to support children and families and prevent foster care placements. The Act focuses on family engagement and evidence-based practices, and requires judicial oversight of the placement and review of children in residential treatment programs to ensure that children are in the least restrictive placement that meets their needs consistent with their permanency plan.

There are different effective dates for various provisions of the Act and state agencies have the ability to delay implementation or waive certain features of the Act. The National Council of Juvenile and Family Court Judges (NCJFCJ) encourages courts to work with their state child welfare agencies to implement this important legislation. Funding for prevention services and programs is effective October 1, 2018, but states cannot seek reimbursement until October 1, 2019, and only if they are in compliance with the provisions of the Act related to Qualified Residential Treatment Programs.

PREVENTION SERVICES AND PROGRAMS

The Act provides the following prevention services and programs for up to 12 months:

- Mental health and substance abuse prevention and treatment services provided by a qualified clinician; and
- In-home parenting skill-based services and programs, which include parenting skills training, parent education, and individual and family counseling.¹

Who is eligible for prevention services or programs?

- A child who is a candidate for foster care;
- A child in foster care who is pregnant or parenting; and
- The parents or kin caregivers of these children.²

CANDIDATE FOR FOSTER CARE

A child identified in a prevention plan as being at imminent risk of entering foster care (without regard to be eligible for Title IV-E maintenance payments), but who can remain safely in the child's home or in a kinship placement as long as services or programs that are necessary to prevent entry of the child into foster care are provided. The term includes a child whose adoption or guardianship arrangement is at risk of a disruption or dissolution. FFPSA, Part 1, Sec. 50711(b)(13).

Requirements for Prevention Services and Programs:

- Specified in advance in a child's written prevention plan as outlined by the Act;
- Trauma informed;
- Evidence-based in accordance with promising, supporting or well-supported practices;³
- Provide for outcome assessments and reporting; and
- Evaluation strategy which must be included in the five-year plan.⁴

FAMILY REUNIFICATION SERVICES

The Family First Prevention Services Act provides that Title IV-E foster care maintenance payments can be made on behalf of a child in foster care when he/she is placed with their parent in a licensed residential family-based treatment facility for up to 12 months.⁵ The Act also reauthorizes regional partnership grant programs to assist families affected by substance abuse.⁶ Also to ensure the strength and stability of reunification, these services can be provided to children who have been removed from home and may continue for 15 months from the date the child returns home.⁷ These services include:

- Individual, group, and family counseling;
- Inpatient, residential, or outpatient substance abuse treatment services;
- Mental health services;
- Assistance to address domestic violence;
- Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries;
- Peer-to-peer mentoring and support groups for parents and primary caregivers;
- Services and activities designed to facilitate access to, and visitation of, children by parents and siblings; and
- Transportation to or from any of the services and activities services and programs.⁸

The Act provides funding for evidence-based Kinship Navigator Programs⁹ and to support and retain foster homes. It provides for the review and improvement of

licensing standards for relative foster homes.¹⁰ It also reauthorizes the Stephanie Tubbs Jones Child Welfare Program, Promoting Safe and Stable Families Program Authorizations, and Court Improvement Programs (CIP).¹¹ The Act continues funding for incentives to States to promote adoption and legal guardianships¹² and requires States to establish electronic case processing system for the Interstate Compact on the Placement of Children (ICPC).¹³

FOSTER CARE PLACEMENTS

The Family First Prevention Services Act requires that when children must be removed, that they shall be placed in the least restrictive and most appropriate setting that meets their needs. The Act further defines family foster homes, including relatives to limit six children in a home, unless the agency makes an exception. Agencies can make an exception to keep siblings together, for a parenting foster youth to remain with his/her child, for a child to remain with a family he/she has a meaningful relationship with, and to allow a family with specialized training and skills to care for a child with severe disabilities.¹⁴

Title IV-E maintenance payments will only pay for specified placements (with the exception of a two week grace period), beginning October 1, 2019 as to residential treatment placements. While States have the option to delay this effective date for up to two years, they will not receive any Title IV-E prevention funds for the same period they delay compliance with this section of the law.¹⁵ These eligible placements include:

- Qualified Residential Treatment Programs as set forth in the Act;
- Specialized settings for prenatal, postpartum, or parenting support for youth;
- Supervised setting for youth that have attained the age of 18 and are living independently; and
- Highly qualified residential care and supportive services to children and youth who have been found to be or are at risk of becoming sex trafficking victims.¹⁶

FAMILY FIRST AND CHAFEE

Extends Education and Training Vouchers (ETVs) to youth age 14-26, but limits to a five-year total. FFPSA, Part IV, Sec. 50753(c).

Extends the Chafee Program to age 23 if states and tribes have extended eligibility for all foster care youth who have not attained the age of 21. FFPSA, Part IV, Sec. 50753(a).

The Act also requires States and Tribes to include in their Title IV-B Health and Care and Oversight Coordination Plan procedures to ensure that foster care children and youth are not inappropriately diagnosed with mental health illnesses, behavioral disorders, medically fragile conditions, or developmental disabilities and placed in inappropriate settings as a result of incorrect diagnosis.¹⁷

The NCJFCJ firmly believes that every child deserves a family and that it is in the best interest of children under court supervision to live in a family setting whenever possible. The NCJFCJ acknowledges that a continuum of services requires quality group care for children who are assessed and determined to need specialized behavioral and mental health services. Judicial oversight is necessary to prevent unnecessary placement in group care and to protect children placed in such care.

QUALIFIED RESIDENTIAL TREATMENT PROGRAMS

To qualify for Title IV-E maintenance payments for children placed in residential treatment, the facility must:

- Be licensed and accredited;
- Follow a trauma-informed treatment model designed to address the needs of children with serious emotional or behavioral disorders or disturbances and implement the treatment identified by the assessment;

- Employ licensed nursing and other clinical staff who are able to provide services 24 hours, seven days a week according to the trauma-informed treatment model;
- Facilitate and document family outreach, including how the family is integrated into the treatment process, including post-discharge;
- Provide for discharge planning and family-based after-care support for at least six months post-discharge; and
- Require all staff to undergo and pass criminal background checks and abuse and neglect clearances.¹⁸

Within 30 days of the placement a “qualified individual” shall conduct an assessment using an age-appropriate, evidence-based, validated, functional assessment tool that has been approved by the Secretary of the U.S. Department of Health and Human Services.¹⁹

The “qualified individual” cannot be an employee of the Title IV-E agency and cannot be connected to, or affiliated with, any placement setting in which children are placed by the agency. HHS may waive the “qualified individual” requirement if the Title IV-E agency certifies that the person who will conduct the assessments will maintain objectivity in determining the most effective and appropriate placements. FFPSA, Sec. 50742(c)(1)(D).

The assessment shall:

- Assess the strengths and needs of the child;
- Determine whether the child’s needs can be met by family members or in a foster-family home, and if not, what would provide the most appropriate level of care in the least restrictive environment consistent with the child’s permanency plan;
- Develop a list of child specific short- and long-term mental and behavioral health goals; and
- Involve the child’s Family and Permanency Team while conducting the assessment.²⁰

The Family and Permanency Team includes appropriate biological family, fictive kin, professionals who are a resource for the child, medical or mental health professionals who have treated the child, or clergy. If the child is 14 or older, the team shall include members selected by the child.²¹ If the assessment is not completed within 30 days after the placement is made, no Title IV-E maintenance payments will be made to the State on behalf of the child during the placement.²²

If the qualified individual recommends placement other than with family or in a foster home, the assessment shall specifically provide:

- Why the needs of the child cannot be met by the child's family or in a foster family home (a shortage or lack of foster homes is not an acceptable reason for residential placement);
- Why the proposed placement is the most effective and appropriate level of care in the least restrictive environment;
- How the placement is consistent with the child's short- and long-term goals as specified by the child's permanency plan;²³ and
- The placement preferences of the Family and Permanency Team recognizing that children should be placed with their siblings, unless there is a finding by the court that such placement is contrary to the child's best interest.²⁴



The state must document in the child's case plan:

- The reasonable and good faith efforts of the State to identify and include all of the individuals of the child's family and permanency team, including all contact information for the permanency team, and other family members and fictive kin who are not part of the Family and Permanency Team;
- Evidence of family engagement must be documented to include times of meetings relating to the assessment to ensure that they were held at a time and place convenient for the family;
- If reunification is the permanency goal, the case plan must include evidence demonstrating that the parent from whom the child was removed provided input on the Family and Permanency Team;
- The placement preferences of the Family and Permanency Team relative to the assessment should recognize that children should be placed with their siblings, unless there is a court finding that such placement is contrary to the child's best interest; and
- If the placement preferences of the Family and Permanency Team and child are not the placement setting recommended by the qualified individual conducting the assessment, the case plan shall document the reasons why the preferences of the team and of the child were not recommended.²⁵

THE COURT'S OVERSIGHT ROLE

Within 60 days of a child's placement into a qualified residential treatment program, the Court must review the assessment and documentation made by the "qualified individual" who conducted the assessment.²⁶ The Court must either approve or disapprove the placement to comply with the Act.²⁷ In making this determination, the Court must determine whether the needs of the child can be met through placement with family or in a foster family home. If placement with family or in a foster- family home will not meet the child's needs, the Court must determine whether the residential qualified placement:

- Provides the most effective and appropriate level of care for the child in the least restrictive environment; and
- Is consistent with the long- and short- term goals as established in the child's permanency plan.²⁸

The Court's decision to approve or disapprove of the placement must be documented in the child's case plan.²⁹ Consistent with federal and state law, children in out of home placements require review hearings. The Act envisions consistent and regular court monitoring of these placements to ensure children needing specialized care receive such care until it is no longer needed based on the evidence. As long as the child remains in a qualified residential treatment program, the state agency is required to provide the following evidence at each review and permanency hearing:

- That the ongoing assessments of the strengths and needs of the child continue to support that the needs of the child cannot be met through placement with family or in a family-foster home;
- That the residential placement provides the most effective level and appropriate level of care in the least restrictive environment;
- The specific treatment or service needs that will be met for the child in placement and the length of time the child is expected to need the treatment or services; and
- The agency's efforts to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent or in a foster-family home after discharge.³⁰

Judges have a duty to ensure that children under court jurisdiction are being properly assessed and are placed in the least restrictive setting that meets their needs. On August 8, 2016, the NCJFCJ Board of Directors adopted a [Resolution on Judicial Oversight of Children under Court Jurisdiction in Group Facilities](#).

Judges should set clear expectations for family engagement, and individualized, detailed treatment and transition plans for the child to return home with community services and supports. The Court should

also ensure that the child and family are engaged in the development of treatment and transition plans and that they feel that they have the services and supports to successfully transition home.

Finally, the Family First Prevention Services Act requires states to track and develop statewide plans to prevent child abuse and neglect fatalities.³¹ It also requires states to include a certification in their state plan that the state will not enact or advance any policies or practices that would result in a significant increase in the state's juvenile justice system.³² The Act also requires Court Improvement Programs to provide training to judges, attorneys, and other legal personnel in child welfare cases on the placement requirements under this Act.³³

For judicial training or technical assistance on the Family First Prevention Services Act for implementation, please contact the NCJFCJ at contactus@ncjfcj.org.

ENDNOTES

- 1 FPPSA Part I, Sec. 50711(e)(1)(A-B) amending Section 471 of the Social Security Act (42 U.S.C. 671).
- 2 FPPSA Part I, Sec. 50711(a)(1) amending Section 471 of the Social Security Act (42 U.S.C. 671).
- 3 The U.S. Department of Health and Human Services will provide guidance to States and Tribes on evidence-based program standards along with a list of preapproved programs and services no later than October 1, 2018.
- 4 FPPSA Part I, Sec. 50711(e)(4-5) amending Section 471 of the Social Security Act (42 U.S.C. 671).
- 5 FPPSA Part I, Sec. 50712 amending Section 472 of the Social Security Act (42 U.S.C. 672).
- 6 FPPSA, Part IV, Sec. 50742(c)(1)(C) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 7 FPPSA Part II, Sec. 50721(a)(2)(C) amending Section 431(a)(7)(A) of the Social Security Act (42 U.S.C. 629(a)(7)).
- 8 Section 431(a)(7)(B)
- 9 FPPSA, Part I, Sec. 50713 amending Section 474(a) of the Social Security Act (42 U.S.C. 674(a)).
- 10 FPPSA, Part III, Sec. 50731 amending Section 472(b) of the Social Security Act (42 U.S.C. 671(a)).
- 11 FPPSA, Part V, Sec. 50752 amending Section 425 of the Social Security Act (42 U.S.C. 625).
- 12 FPPSA, Part VI, Sec. 50761(b) amending Section 473A of the Social Security Act (42 U.S.C. 673(b)).
- 13 FPPSA, Part II, Sec. 50722 amending Section 471(a)(25), Section 479B(c), Section 437 and Section 437(b) of the Social Security Act (42 U.S.C. 671 and 629).
- 14 FPPSA, Part IV, Sec. 50746(b)
- 15 FPPSA, Part IV, Sec. 50741(c)
- 16 FPPSA, Part IV, Sec. 50741(k) amending Section 472 of the Social Security Act (42 U.S.C. 672), as amended by 50712(a).
- 17 FPPSA, Part IV, Sec. 50743(a-c) amending Section 472 (b)(15)(A) and Section 476 of the Social Security Act (42 U.S.C. 622 and 676).
- 18 FPPSA, Part IV, Sec. 50741(k)(4) amending Section 472 of the Social Security Act (42 U.S.C. 672) as amended by 50712(a).
- 19 FPPSA, Part IV, Sec. 50742(c)(1)(A)(i) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 20 FPPSA, Part IV, Sec. 50742(c)(1) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 21 FPPSA, Part IV, Sec. 50742(c)(1)(B)(ii) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 22 FPPSA, Part IV, Sec. 50741(k)(3)(A) amending Section 472 of the Social Security Act (42 U.S.C. 672) as amended by 50712(a).
- 23 FPPSA, Part IV, Sec. 50742(c)(1)(C) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 24 FPPSA, Part IV, Sec. 50742(c)(1)(B)(iii)(VII) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 25 FPPSA, Part IV, Sec. 50742(c)(1)(B)(iii) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 26 FPPSA, Part IV, Sec. 50742(c)(2) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 27 FPPSA, Part IV, Sec. 50742(c)(2)(C) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 28 FPPSA, Part IV, Sec. 50742(c)(2)(B) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 29 FPPSA, Part IV, Sec. 50742(c)(2)(C)(3) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 30 FPPSA, Part IV, Sec. 50742(c)(2)(C)(4) amending Section 475A of the Social Security Act (42 U.S.C. 675(a)).
- 31 FPPSA, Part III, Sec. 50732 amending Section 422(b)(19) of the Social Security Act (42 U.S.C. 622(b)(19)).
- 32 FPPSA, Part IV, Sec. 50741(d) amending Section 471(a) of the Social Security Act (42 U.S.C. 671(a)).
- 33 FPPSA, Part IV, Sec. 50741(c) amending Section 471(a) of the Social Security Act (42 U.S.C. 671(a)).