

# Using the Family First Prevention Services Act to Strengthen Reasonable Efforts Determinations

ABA Center on Children and the Law

National Council of Juvenile and Family Court Judges

## Quick Overview

This judge's action alert highlights:

- how reasonable efforts findings support children and families in the child welfare system.
- how the Family First Act strengthens judges' reasonable efforts findings.
- how to use the Family First Act to strengthen reasonable efforts to prevent removal.
- how to use the Family First Act to strengthen reasonable efforts to reunify or achieve permanency.
- how to strengthen Family First Act implementation and reasonable efforts determinations at the community level.

**R**easonable efforts determinations are a valuable tool judges can use to assess a child welfare agency's efforts:

- to support a family without separating them, or
- to reunify the family or achieve another form of permanency when separation is required for the child's safety.

Though "reasonable efforts" requirements have existed in federal law for over 40 years,<sup>1</sup> the Family First Prevention Services Act of 2018 (Family First Act) provides opportunities to reexamine and enhance judicial decision making on the topic.

## How do reasonable efforts findings support children and families in the child welfare system?

More than simply a link between the child welfare agency and federal funding, findings of reasonable efforts or no reasonable efforts are recognized as "the most powerful tools given to the courts."<sup>2</sup> These determinations, when individualized and fact-specific, serve as checks on whether families in contact with state authorities are being provided appropriate support to avoid separation or achieve permanency.

### Reasonable efforts to preserve families

Federal law requires that reasonable efforts be made to preserve families, "prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home."<sup>3</sup> Any actions the agency takes after removing the child but before the first court hearing, including service referrals or other efforts, cannot be considered as reasonable efforts to *prevent* removal. If this judicial determination regarding reasonable efforts is not made within 60 days of the child's removal, the child welfare agency will not be able to access federal Title IV-E funding throughout the child's stay in foster care.<sup>4</sup>

### Reasonable efforts to reunify or achieve permanency

Additionally, reasonable efforts must be made to safely reunify families or "to place the child in a timely manner in accordance with the permanency plan...and to complete whatever steps are necessary to finalize the permanent placement of the child."<sup>5</sup> A judicial finding of these reasonable efforts to return the child home or finalize adoption, guardianship, or another permanency goal must be made within 12 months of foster care entry and at least once every 12 months thereafter.<sup>6</sup> Absent this finding, the child welfare agency will not receive federal IV-E funding until a reasonable efforts finding is made.<sup>7</sup>

## Reasonable efforts to maintain sibling connections

Federal law also requires that in order to draw down federal Title IV-E funding, the agency must make reasonable efforts to maintain sibling connections (no judicial finding requirement is specified). The Fostering Connections and Increasing Adoptions Act of 2008 added that reasonable efforts must be made to place siblings removed from their home in the same placement, unless it does not protect the safety or well-being of any of the siblings.<sup>8</sup> When siblings are not placed together, reasonable efforts must be made to provide frequent visitation or other “ongoing interaction” absent evidence that the contact would be contrary to the safety or well-being of any of the siblings.<sup>9</sup>

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## How does the Family First Prevention Services Act strengthen reasonable efforts findings?

### Prevention services to maintain family unity

One cornerstone of the Family First Act reflects the fundamental purpose of requiring reasonable efforts to avoid the trauma of removal when children are removed from their homes. Reasonable efforts requirements have long recognized “a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone.”<sup>10</sup> The Family First Act strives to avoid unnecessary removals by providing federal funding for prevention services that maintain family unity. Family First gives states access to federal Title IV-E dollars for approved, evidence-based prevention services for mental health, substance use, and parenting services.<sup>11</sup> A jurisdiction may define which children, parents, or other caregivers are eligible for federally supported services in these areas, as long as that eligible population falls within Family First’s definition of children who are “candidates for foster care.”<sup>12</sup>

### Preferred placement settings, supports for transition-age youth

If the child enters foster care and a relevant petition is filed in court, the Family First Act also offers detailed direction about preferred placement settings and opportunities for expanded supports for transition-aged youth, among other provisions.<sup>13</sup> Assessing how and whether agencies are taking advantage of these requirements and opportunities is a key role for

judges to effectively implement Family First and for the overall monitoring of the child welfare system’s engagement of individual families.

## How can judges use the Family First Act to strengthen assessments of reasonable efforts to prevent removal?

Many child welfare agencies offered prevention services to families they identified as needing support before the Family First Act was enacted. The Act provided states access to Title IV-E funding for certain services for the first time, which has encouraged agencies and state implementation groups to assess what supports families in their jurisdictions most need and what services are available.

Some judges may believe the window for “prevention” of child welfare system involvement has closed by the time they learn of a family’s case. After all, the petition has been filed and the child has often already been removed from the parents’ care. As Dr. Jerry Milner, who served as Associate Commissioner at the U.S. Department of Health and Human Services Children’s Bureau when the Family First Act became law, has noted, “Judges and attorneys play absolutely critical roles in prevention in and out of the courtroom ... and enhanced attention to reasonable efforts will have a ripple effect across the justice system by helping children and families stay safe and healthy and avoid juvenile justice and child welfare involvement. Prevention is the work of the courts.”<sup>14</sup>

### Considerations for judges

When a family’s proceeding begins in court, a first step when a judge considers if reasonable efforts were made to prevent removal is to ask what services or supports were provided to the family before the child was removed, including federally supported prevention services. Judges may, for example:

- Ask if the parents were offered in-home parenting services before the child was removed. If so, were those services in the language the parent understands best?
- Ask if the family was connected with mental health services providers. If so, were the providers accessible and available at the time of removal?
- Issue court orders for prevention services that may allow the child to remain safely at home if reasonable efforts were not made before removal.

If the judge does not feel equipped to determine whether reasonable efforts were made before removal, consider:

- What evidence of reasonable efforts is being offered and challenged by attorneys in the early proceedings? The judge can invite discussion and debate among parties about whether a finding of reasonable efforts would be appropriate.
- Can the matter be continued so the attorney representing the agency can discern and present more information about what efforts were provided before the child was removed?

### *Considerations in cases involving expectant and parenting youth*

The Family First Act recognizes the needs of expectant and parenting youth in care. The Act specifically identifies these youth as eligible for Family First prevention services, distinct from children who are “candidates for foster care,” as identified by the state or other jurisdiction. Relevant considerations may include:

- Was the baby of a young parent in foster care “placed” in care as well? If so, why was that necessary? Was this parent first offered parenting skills or other supports, such as maintenance payments to include expenses incurred on the baby’s behalf?<sup>15</sup>
- Is the expectant or parenting youth in foster care interested in prevention services? If so, are they being provided around the parent’s work or school schedule?
- What services are being provided for the child of this young parent?

*Note:* Neither the Family First Act nor federal reasonable efforts requirements direct that a finding of no reasonable efforts leads to immediate reunification of the child and parents. As always, the court should consider any existing risk to the child’s safety at home and determine whether remaining in the home “would be contrary to the child’s welfare” or if placement is in the child’s best interest.<sup>16</sup>

### *How can judges use the Family First Act to strengthen assessments of reasonable efforts to achieve permanency?*

Judicial reasonable efforts determinations can consider whether Family First Act priorities are incorporated into efforts to achieve reunification between children

and their parents or another form of permanency. These priority areas reflect different avenues to meaningfully engage families and strengthen case practice. For example, the Family First Act:

- States a preference for *family-based foster care* over congregate care settings (a cornerstone principle). The Act restricts federal funding to time-limited residential care and other specialized group settings, reflecting research that youth in care fare better in family-based settings. Judges can question, accordingly, whether reasonable efforts have been made to support youth and advance permanency goals by pursuing family foster homes.
- Recognizes the importance of safely maintaining *sibling connections*. An exception to the Family First Act’s requirement that a “family foster home” include no more than six children in foster care is available for sibling groups to live together.<sup>17</sup>
- Prioritizes *kinship care*<sup>18</sup> in several ways, including:
  - provides federal funding for kinship navigator programs, which provide information about programs and services to meet the needs of children and their kinship caregivers.
  - requires states to examine and report on their foster parent licensing standards and their use of waivers for kin caregivers.
- Stresses the importance of reunification services to preventing reentry into care.
  - Extends the period a family can receive reunification services financed by a separate stream of federal funding, including counseling, substance use treatment, assistance to address domestic violence, peer mentoring, visitation, and transportation.
- Provides opportunities for better *supporting transition-age youth* while they are in care and as they exit care. Many states have taken advantage of opportunities under Family First to extend the age of eligibility for Chafee program independent living services, including educational training vouchers, to include more youth currently and formerly in foster care.

### *Considerations for judges*

To incorporate the areas strengthened by the Family First Act when considering reasonable efforts for families, judges can:

- Ask whether the agency used diligent efforts to locate kin and support kin placements. This approach allows children to transition immediately from their home to another familiar setting with someone they already know or with whom they share a cultural or religious background.
- Consider court orders to refer kinship families to state or local kinship navigator programs and other supports, as appropriate.
- Ask what reasonable efforts have been made to find a living arrangement for an older teen or young adult in care other than traditional congregate care—e.g., family foster home, independent living setting, or specialized setting with services for victims of sex trafficking.
- Determine whether siblings were placed together in a home, and if not, why? Ask if a visitation plan is in place or is being sought to support successful reunification or other form of permanency together.
- If a child is receiving residential treatment through a Qualified Residential Treatment Program, as defined by the Family First Act,<sup>19</sup> or other setting, ask whether parents or other relatives have been involved in the treatment plan to facilitate a successful transition back to the parents' or kin caregivers' home.
- Determine what efforts are being made to prepare an older youth to transition from foster care. If the state took Family First's option to extend independent living services, including educational training vouchers, to an expanded eligibility group, ask what steps have been taken to share those opportunities with the youth.
- Ask what reunification efforts are in place to support a parent and family after a child returns home on a trial home visit, with the goal of stabilizing the family and avoiding the child's reentry into foster care.

### What steps can judges take in the community to strengthen Family First Act implementation and reasonable efforts determinations?

Beyond presiding over the matters of individual families, judges can help strengthen how their jurisdiction's child welfare system works with families by considering how elements of the Family First Act are implemented and adapted locally. Judges can:

- Participate in a task force, subcommittee, or other

### Related Resources

Several resources offer guidance to judges, attorneys, and other child welfare system participants. Explore what your jurisdiction has developed to help identify relevant statutes or policies, prevention services, and more.

- ABA Center on Children and the Law. [\*The Family First Prevention Services Act of 2018: A Guide for the Legal Community\*](#). 2020.
- Edwards, Hon. Leonard. [\*Reasonable Efforts: A Judicial Perspective\*, 2<sup>nd</sup> ed.](#), 2022.
- Edwards, Judge Leonard. “[Overcoming Barriers to Make Meaningful Reasonable Efforts Findings](#),” *ABA Child Law Practice Today*, January 29, 2019.
- Milner, Jerry & David Kelly. “[Reasonable Efforts as Prevention](#),” *ABA Child Practice Today*, November 6, 2018.
- Quality Improvement Center Collaborative Community Court Teams and ABA Center on Children and the Law. [\*Reasonable and Active Efforts, and Substance Use Disorders: A Toolkit for Professionals Working with Families in or at Risk of Entering the Child Welfare System\*](#), undated.
- U.S. Department of Health and Human Services, Administration on Children, Youth and Families. ACYFCB-IM-20-06, [\*Foster Care as a Support to Families\*](#), April 29, 2020.
- Child Welfare Information Gateway, “[Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children](#),” 2019 (includes state reasonable efforts statutes).
- U.S. Children's Bureau. “[Information Memorandum: Reshaping Child Welfare in the United States to Focus on Strengthening Families through Primary Prevention of Child Maltreatment and Unnecessary Parent-Child Separation](#),” ACYF-CB-IM-18-05. November 2018.
- Child Welfare Information Gateway. [\*Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children\*](#), 2019.



group organized by the child welfare agency or other stakeholders that focuses on implementing, adapting, and improving Family First’s provisions.

- Understand what prevention services are available or under development locally. These services are often identified in the state’s Title IV-E Prevention Program Five-Year Plan, but it is important to confirm with the child welfare agency which services are available to families locally.
- Identify and share any missing prevention supports needed by families in their cases.
- Support efforts to examine if racial disparities exist in who is offered, has access to, and engages in prevention services in your community. Join efforts to address any inequities.
- Consider when prevention services could support families in other cases—e.g., housing, truancy, juvenile delinquency—and direct parties to explore those options, when relevant.

## Conclusion

Reasonable efforts findings remain a critical tool for a judge’s monitoring of cases involving family separation. They can be used to ensure the separation was required to keep the child safe and lasts only as long as needed before the family reunifies or the child reaches permanency another way. When evaluating whether the child welfare agency made reasonable efforts while engaging families, the Family First Act gives judges several areas to consider. These include whether the agency supported the family in the prevention stage, provided family-based settings in foster care that promote sibling connections, fostered relationships with relatives, provided extended support to transition-age youth in foster care, and more.

## Endnotes

1. See The Adoption and Child Welfare Act of 1980, creating Title IV-E of the Social Security Act, including § 471(a)(15).
2. Edwards, Hon. Leonard. “[Ignoring Reasonable Efforts: How Courts Fail to Promote Prevention](#),” *Imprint News*, Dec. 5, 2018.
3. 42 U.S.C. § 671(a)(15).
4. 45 C.F.R. § 1356.21(b)(1)(i).
5. 42 U.S.C. § 671(a)(15).
6. 45 C.F.R. § 1356.21(b)(2)(i).
7. 45 C.F.R. § 1356.21(b)(2)(ii).
8. See 42 U.S.C. § 671(a)(31).
9. See *id.*
10. 65 Fed. Reg. 4052 (response to comment regarding 35 C.F.R. § 1356.21(b)(1)).
11. The list of prevention services reviewed and approved by the U.S. Department of Health and Human Services is available here: <https://preventionservices.acf.hhs.gov/program>.
12. Family First Prevention Services Act, Pub. L. No. 115- 123 (passed as part of the Bipartisan Budget Act of 2018) (2018), Sec. 50711(b), codified at 42 U.S.C. § 675(13); see also U.S. Department of Health and Human Services, Administration on Children, Youth and Families. ACYF-CB-PI-18-09, Sec. (B)(2) (“We are not further defining the phrase ‘candidate for foster care’”).
13. For more detailed information, see ABA Center on Children and the Law. [The Family First Prevention Services Act of 2018: A Guide for the Legal Community](#), 2020.
14. National Judicial Opioid Task Force. [The Court’s Role in Reshaping the Child Welfare System to Focus on Prevention](#), 2019.
15. See 45 C.F.R. § 1356.21(j) (Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child’s son or daughter); See also Pilnik, Lisa. [“Advocacy for Young or Expectant Parents in Foster Care.”](#) *ABA Child Law Practice* 28(7), 2009, 110.
16. 45 C.F.R. § 1356.21(c).
17. Family First Act, Sec. 50741(b), codified at 42 U.S.C. § 672(c)(1).
18. Though states differ in their definitions of kinship care, the term is commonly understood to refer to full-time care of a child by a blood or adoptive relative or other adult with whom the child has a meaningful connection.
19. See Family First Act, Secs. 50741, 50742, 50745, 50746, codified at 42 U.S.C. §§ 672(k), 675a(c), 671(a)(20).

Funding for this alert was provided by the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention through Award #2018-CT-FX-K001 to the National Council of Juvenile and Family Court Judges. Points of view or opinions expressed are those of the report contributors and do not necessarily represent the official position or policies of the funder or the National Council of Juvenile and Family Court Judges.