



## Relevant Federal and State Law<sup>1</sup>

### FEDERAL LAW

#### ❖ **Adoption Assistance and Child Welfare Act of 1980 (AACWA)<sup>2</sup>**

- ✓ AACWA requires the Department to make “reasonable efforts” to prevent the removal of a child. If, despite making reasonable efforts to prevent removal, a removal nevertheless occurs, the Department must make reasonable efforts toward reunification of the youth with the family, unless an exception applies.<sup>3</sup>
- ✓ Each youth should have a case plan that describes where and in what setting the youth is to be placed and a discussion of the safety and appropriateness of the placement.<sup>4</sup>
- ✓ Additionally, AACWA states that each youth should have a case plan, “designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available...”<sup>5</sup>

#### ❖ **Adoption and Safe Families Act (ASFA)<sup>6</sup>**

- ✓ In order to be eligible for federal funds, ASFA requires the state to “consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”<sup>7</sup>

#### ❖ **Family First Prevention Services Act (FFPSA)<sup>8</sup>**

- ✓ Congress passed the **Family First Prevention Services Act (FFPSA)** in 2018; the law makes dramatic changes to federal financing of child welfare. FFPSA emphasizes the importance of youth growing up in families by opening new

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<sup>1</sup> This page summarizes some of the relevant federal law that might be helpful in advocating against institutional care placements. Attorneys should use this page as a reference but should always conduct their own independent legal research.

<sup>2</sup> Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272; 42 USC §675 (2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at §675(1)(A).

<sup>5</sup> *Id.* at §675(5)(A).

<sup>6</sup> Adoption and Safe Families Act, Pub. L. 105-89; 42 USC §671.

<sup>7</sup> *Id.* at §671 (a)(19)

<sup>8</sup> Family First Prevention Services Act of 2018, Pub. L. 115-123.



avenues of funding for prevention services to keep youth out of foster care and placing new requirements on child welfare agencies and courts to reduce unnecessary institutional care placements. Overall, FFPSA is an attempt to shift federal child welfare funding upstream from primarily supporting out-of-home placement, to services designed to keep youth with family and prevent the need for foster care. Jurisdictions may not access the prevention services funding without also implementing the restrictions on placements. The earliest a jurisdiction could implement these IV-E funding provisions is October 1st, 2019. Jurisdictions may “opt in” any time thereafter, but no later than October 1, 2021. In theory (although unlikely), a state could choose not to implement FFPSA at all and forego all federal funds.

- ✓ The first major systemic change furthered by FFPSA relates to the **front-end of the child welfare system**. The Act for the first time allows Title IV-E (of the Social Security Act) entitlement funding to be used for services to keep youth with their families, and to prevent the need for foster care.<sup>9</sup> Previously, IV-E funds (the largest source of federal child welfare resources) could only be used to provide for out-of-home care and child welfare administrative costs.
- ✓ Secondly, FFPSA places new restrictions on **the use of non-family residential placements** and gives dependency courts new oversight responsibilities when such placements are recommended. Prior federal law did not assign a detailed role to the court in reviewing specific levels of non-kin placements. FFPSA defines a new type of residential care, the **Qualified Residential Treatment Program (QRTP)**, and assigns the court substantial responsibilities in approving and overseeing placements in QRTPs.<sup>10</sup>
- ✓ FFPSA expands funding for Kinship Navigator Programs that link relative caregivers to a broad range of services and supports to help youth remain safely with kin<sup>11</sup>, and requires states to document how their foster care licensing standards accommodate relative caregivers.<sup>12</sup>
- ✓ **Federal funding for institutional care placements is only available in the following circumstances:**
  - Qualified Residential Treatment Programs (QRTP) if the Department has followed the law’s placement protocol (see below);
  - Two weeks of emergency placement;
  - Specialized placements for pregnant and parenting youth;

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<sup>9</sup> Pub. L. 115-123, section 50711.

<sup>10</sup> *Id.* at section 50742.

<sup>11</sup> *Id.* at section 50713.

<sup>12</sup> *Id.* at section 50731.



- Specialized placements for youth at risk of sex trafficking;
  - Supervised independent living settings for youth over 18 years old; and
  - Family-based substance abuse treatment facilities for mothers and children.<sup>13</sup>
- ✓ **Qualified Residential Treatment Program (QRTP) Process:**
- ***Within 30 days***, an **independent assessor** must evaluate the appropriateness of the placement. The assessment must include an “age-appropriate, evidence-based, validated, functional assessment” of the youth and consultation with the youth’s family and permanency team.”<sup>14</sup> The assessor must also develop a list of short and long-term specific goals for the youth.<sup>15</sup>
  - After the evaluation, the independent assessor must render a written recommendation as to whether the needs of the youth can be met by a family member or foster family, and “**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.**” A recommendation for QRTP placement must “specify in writing why the recommended placement in a qualified residential treatment program is the setting that will provide the child with the most effective and appropriate level of care in the least restrictive environment and how that placement is consistent with the short- and long-term goals for the child.”<sup>16</sup>
  - ***Within 60 days***, the court must review the independent assessor’s recommendation and either approve or disapprove the placement. Specifically, the court must determine “whether or not [QRTP] provides the most effective and appropriate level of care for the child in least restrictive environment” and is “consistent with the permanency plan.” If QRTP is recommended over the objection of the child or parent, the reasons why must be documented in the case plan provided to the court.<sup>17</sup>
  - ***At subsequent hearings***, the court must review the continued necessity of QRTP placement. If the Department seeks continued placement, it must submit documentation demonstrating that QRTP continues to be the most effective and appropriate level of care and documenting the

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<sup>13</sup> *Id.* at sections 50741 and 50712.

<sup>14</sup> “The family and permanency team shall consist of all appropriate biological family members, relative, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy.” If over 14 years old, the child may self-select two members of their permanency team as well. Meetings of the family and permanency team must be “**held at a time and place convenient for family.**” Pub. L. 115-123, section 50742 (emphasis added).

<sup>15</sup> *Id.*

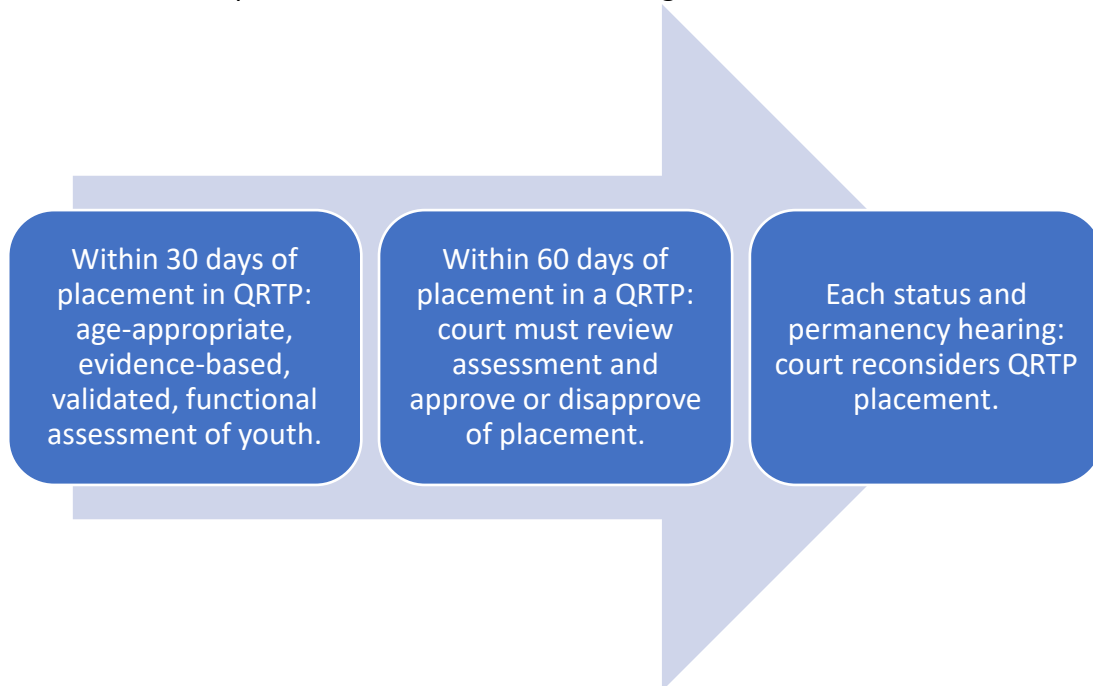
<sup>16</sup> *Id.*

<sup>17</sup> *Id.*



specific treatment or service needs, expected length of time to achieve them, and the Department’s efforts to return the youth to a non-institutional setting.<sup>18</sup>

- If a youth has been placed in QRTP for an extended period<sup>19</sup>, the Department must also submit a signed approval from the state Department director to the federal government.<sup>20</sup>



## **STATE LAW AND COURT RULES**

- ❖ Many states have statutes that guide judicial decision-making about placement decisions. Placement is not solely a Department decision, and should involve youth and family input, attorney advocacy, and judicial review.
- ❖ Furthermore, many states have case law<sup>21</sup> that addresses relative placements and the ability of relatives to serve as placements without first being “licensed” by the Department. Many federal licensing requirements can be waived by 1) waivers allowed by federal dollars (non-safety waivers) and 2) waivers prohibited under federal dollars, but permissible with state dollars.

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<sup>18</sup> *Id.* at section 50742.

<sup>19</sup> For youth over age thirteen, this means over twelve consecutive months or eighteen nonconsecutive months in QRTP placement. For youth under thirteen, this means six consecutive or nonconsecutive months. Pub. L. 115-123, section 50742.

<sup>20</sup> *Id.*

<sup>21</sup> *NJ Dept. of Child Protection & Permanency v. K.N.*, 223 NJ 530 (2015) (placement is not solely within the purview of the Division. There is judicial oversight of placement decisions).