



**TESTIMONY OF JULIA L. DAVIS, ESQ.
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**Submitted to the Joint Fiscal Committees on the
State Fiscal Year 2020-2021 Human Services Budget**

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The Children's Defense Fund-NY thanks the chairs and members of the committees for the opportunity to submit testimony concerning the FY 2020-2021 Executive Budget. The issues raised herein are central to our state-wide advocacy and our mission to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. We pay particular attention to the needs of poor children, children of color and those with disabilities. Our unique approach to improving conditions for youth combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's youth, particularly in the areas of health, education, early childhood, youth justice and child welfare. We appreciate the opportunity to provide the following recommendations as you consider how to best support our children and families.

Preparation for Implementation of the Federal Family First Prevention Act

The federal Family First Prevention Services Act (Family First), signed into law in 2018, includes historic reforms to help keep children safely with their families and avoid the traumatic experience of entering foster care, emphasizes the importance of children growing up in families and helps ensure children are placed in the least restrictive, most family-like setting appropriate to their special needs when foster care is needed. New York, like many other states, opted to

delay implementation of Family First until September 2021. The Executive Budget includes both legislative changes and fiscal investments that will directly impact our ability to comply with Family First, to benefit from new federal funding, and to meet the law's goals to promote family stability.

(1) Placement Settings for Youth in Child Welfare, Juvenile Justice and Status Offense (PINS) Systems: Education, Labor and Family Assistance (ELFA) Section M

One important provision of Family First is limiting federal reimbursement for congregate care (group care) for children as an incentive for states to build up family-based foster care for those who must be removed from their homes. Under Family First, New York will only be able to draw down federal child welfare funds for institutional care where the individual child is evaluated by an independent assessor and found to require placement in a "Qualified Residential Treatment Program" (hereinafter, a "QRTP" or "Qualified Program"), which is group care provided through accredited institutions that meet certain heightened requirements for trauma-informed care, and staffed with registered or licensed clinical staff. The purpose of these federal requirements is to make congregate settings rare among children in foster care. This is a goal that we wholeheartedly support.

Section M of the Article VII ELFA legislation includes amendments to Social Services Law and the Family Court Act that are intended to codify these provisions of Family First. As drafted, however, the proposed legislation raises a number of concerns related to child placements. It permits no discretion for the family court judge when an independent assessor finds that a Qualified Program is not necessary for an individual child; the court can only disapprove the placement in a Qualified Program. (*See, e.g.,* Art. VII, Sec. 2.) As a result, the family court must order that the child be removed from the placement, and the local department of social services must effectuate this move within 30 days. (*See, e.g.,* Art. VII, Sec. 3.) **We are concerned that there are a number of situations where this could result in poor outcomes for children in foster care.**

First, there may be cases where new or supplemental information, unavailable at the time of the assessment or not included therein, is relevant to the inquiry as to where the child can best be placed. The family court should be able to hear from the local department of social services and the parties (the child and parents), and weigh this information in determining

whether to make a placement in a Qualified Program – even when the assessment indicates that it is not necessary. Indeed, Family First requires the courts to make such decisions at hearings and with a written record. Nothing in the federal law instructs the family court to merely adopt the independent assessment findings.

Similarly, there will be situations where there is no family foster care setting available for the child, but the assessment does not determine that a Qualified Program is necessary. In this scenario, the proposed legislation permits the family court to place the youth in an undefined alternative “residential setting” approved by the Office of Children and Family Services in forthcoming regulations, but it is not clear what these settings will be. Nothing in the legislation indicates that these alternatives will be less restrictive settings, and we are worried that they are likely to be shelters and other short-term programs without the robust staffing and services that Qualified Programs provide. Moreover, because providers have been preparing for Family First implementation for the last 2 years, there are likely to be very few settings that remain which would not meet the criteria for Qualified Programs. **As New York builds up its array of family based foster care over the next year, family court judges and local departments of social services (who have legal responsibility for the children) should be given the flexibility to maintain a youth in a Qualified Program setting to preserve stability and continuity of care, based on the facts of each case.**

It is important to note that the legislative proposal raises parallel concerns that apply to children in our juvenile justice system and subject to placement under our status offender system (Persons In Need of Supervision, “PINS”). (See Art. VII, Secs. 4-7.)

All relevant provisions in Part M should be amended to explicitly state that the family court shall have the authority to approve or disapprove a child’s placement in a qualified program, informed by, but not restricted to, the findings of the assessment.¹

¹ See proposed amendments to SSL § 393(2)(a)(iii); FCA §§ 353.7(3)(a)(iii), 756-b(3)(a)(iii), 1055-c(2)(c), 1091-a(3)(c), 1097(3)(c)). We also request that you delete the following language: “**The scope of the court’s consideration and determination shall be limited to the provisions set forth in...of this section.**” (See proposed amendments to SSL § 393(2)(c); FCA §§ 353.7(3)(c), 756-b(3)(c), 1055-c(4), 1091-a(5), 1097(5)).

(2) Restoring Child Welfare Preventive Services Funding and Preparing for Family First

We are disheartened by the Executive Budget's cuts to child welfare preventive services, reducing the allocation of \$635 million to \$610 million, and requiring localities to use TANF Flexible Fund for Family Services (FFFS) for these essential child welfare services. The effect is to remove \$40 million (when combined with local share) from the FFFS program, which is a cut to a broad range of supports for low-income people and families – indeed, those at the highest risk for contact with the child welfare system. **Funds should be restored to both the preventive services line (\$635 million) and the TANF FFFS line (\$25 million).**

Failing to invest in preventive services now is especially short-sighted because Family First will allow states to seek federal reimbursement for evidence-based preventive services in New York if the State chooses to opt-in to the preventive services plan component of the law in 2021. We urge New York to adopt this provision of the new federal law to help fund existing services, and to expand access to evidence-based preventive programs across the state. Under Family First, federal reimbursement will be available for 50% of prevention services and programs that are “well-supported” as determined and maintained in the federal Family First Clearinghouse. Under the Family First Transition Act (passed in late 2019), federal reimbursement would be available for state spending on both “supported” and “well supported” programs to count toward that 50% requirement during fiscal years 2022 and 2023. This law was passed in response to states’ concerns around developing the array of preventive services necessary to successfully implement Family First. The added flexibility it provides gives New York the opportunity to recoup more federal funding for preventive services because it would permit reimbursement for a wider range of programs.

New York’s open-ended state reimbursement to localities for preventive and protective services, which is set at 65% in statute, has been reduced to 62% through the state budget each year since 2008. **We recommend that the state restore reimbursement to 65% and designate the restored funds (estimated as \$30 million total; \$19.5 million in state share) to support counties in developing and implementing evidence-based services through community-based organizations, which may be reimbursable by the federal government under Family First.**

(3) Removing KinGAP From the Foster Care Block Grant

The Kinship Guardianship Assistance Program (KinGAP) is under-utilized across the state; in 2017, there were 3,645 children in foster care with a relative, but only 481 children statewide left foster care for a KinGAP arrangement. Nearly 80% of those were in New York City. There is a clear opportunity to expand the use of KinGAP across the state. To do this, New York should fund KinGAP outside of the Foster Care Block Grant. Because counties must prioritize their Block Grant funds for foster care, funding KinGAP from these limited dollars can create a disincentive for counties to support families with KinGAP. **To remedy this, the State should make KinGAP subsidies an independent and open-ended funding stream, like adoption subsidies. Estimates are that this would require approximately \$30 million in state funding.**

Thank you for the opportunity to submit this testimony.

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