

Reinstating Parental Rights: Another Path to Permanency?

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The call was unexpected. Stunned, Cathy listened carefully as the social worker asked her, "Would you be interested in being part of Mark's life again?" Some eight years earlier, after she had lost her parental rights, Cathy¹ had hugged her first born, 6-year-old Mark,² one last time. She had given him a book with her Social Security number in it, hoping that when he was grown it would help him to find her. As the years passed, she assumed he had been adopted, but he never was. In fact,

after several failed placements, he was struggling in a group home. The state child welfare agency's connection specialist decided to locate and contact Cathy, thinking that she would be able to provide leads to extended family, or that Cathy's own circumstances might have changed. Indeed, Cathy had turned her life around. As a young parent, she lost her first child due to substance abuse and domestic violence, and she vowed to make the changes that would prevent the loss of another child. She remarried, had another child, and was in college, preparing for a career in social services.

Reunification was not immediately considered. After months of visits and family counseling, however, Cathy, her husband, Mark, and the state social workers all agreed that Mark should be reunified with his mother and her family. In the absence of a statute authorizing the reinstatement of Cathy's parental rights, Cathy had no recourse but to adopt her first born child. Cathy is now an advocate for a law in her state that would allow a court to reinstate a parent's rights. She recently completed her social work internship in the same office that removed Mark from her many years ago.³

The story of Cathy and her son Mark illustrates that people change and that some parents whose rights have been terminated can provide permanency for their children who would otherwise age out of foster care. It also illustrates

¹ "Cathy" is a pseudonym employed to respectfully protect this birth mother's privacy.

² "Mark" is a pseudonym employed to respectfully protect this youth's privacy.

³ We are indebted to Cathy and Mark for permitting use of their story of courage, resilience, and hope. Cathy was interviewed on 8/30/2010.

the lack of options these parents and their children face. Unlike Cathy, many parents in her situation are not able to regain parental rights through adoption because of restrictive state laws and court decisions. The very policies that are intended to ensure permanency can sometimes be obstacles to re-establishing permanent families.

This article examines an innovative approach to permanency for youth in foster care: reinstatement of parental rights. To demonstrate the rationale for this policy, trends are highlighted regarding youth with the goal of alternate planned permanent living arrangements and those who age out of care with no permanent legal connections to adults. The article also looks at data regarding youth who maintain or seek out connections with birth families after emancipation from foster care. The statutes that authorize reinstatement of parental rights are then analyzed. The article concludes with some brief thoughts about what child welfare agencies and courts should consider as they prepare to implement these new statutes.

New Public Policies Seek to Expand Permanency Planning Options

Over the past six years, eight states have enacted laws that authorize courts to restore a parent's rights that were involuntarily terminated. These laws do not vacate or reverse the original termination of parental rights per se; in fact, they don't make any changes to that legal finding. Rather, these statutes allow courts to entertain the possibility that the parent or parents have remedied the problems that resulted in the original termination finding and to consider the youth's wish to have his or her parent's rights reinstated. They provide a legal remedy for certain situations in which the rights of a youth's parents have been terminated, yet the youth has not been adopted.

The Current State of Affairs: The "Best Laid Plans"

In spite of the best intentions of the Adoption and Safe Families Act of 1997, not all children who become "legally free" for adoption are subsequently adopted by kin or a new family. One 2009 study of children waiting for adoption found that a child's likelihood of being adopted decreases 80% each year following the termination of parental rights. The study also found high rates of emotional and behavioral problems in this group and that these problems were associated with delays in being adopted (Cushing & Greenblatt, 2009). Systemic factors also weigh heavily. Given that child welfare agencies are overburdened, under-resourced, confronted by high social worker turnover, and challenged to match available families with waiting children and youth, even the best permanency plans do not always come to fruition. Using the end of 2009 for point in time data analysis, a full 37.7% of 16- to 17-year-olds in care had a goal of another planned permanent living arrangement, and an additional 7.1% had no recorded permanency goal (U.S. Department of Health and Human Services [USDHHS], 2010). "Another planned permanent living arrangement" means any plan other than reunification, adoption, guardianship, or permanent placement with a fit and willing relative. In most cases, children with another planned permanent living arrangement goal remain in foster care until they emancipate.

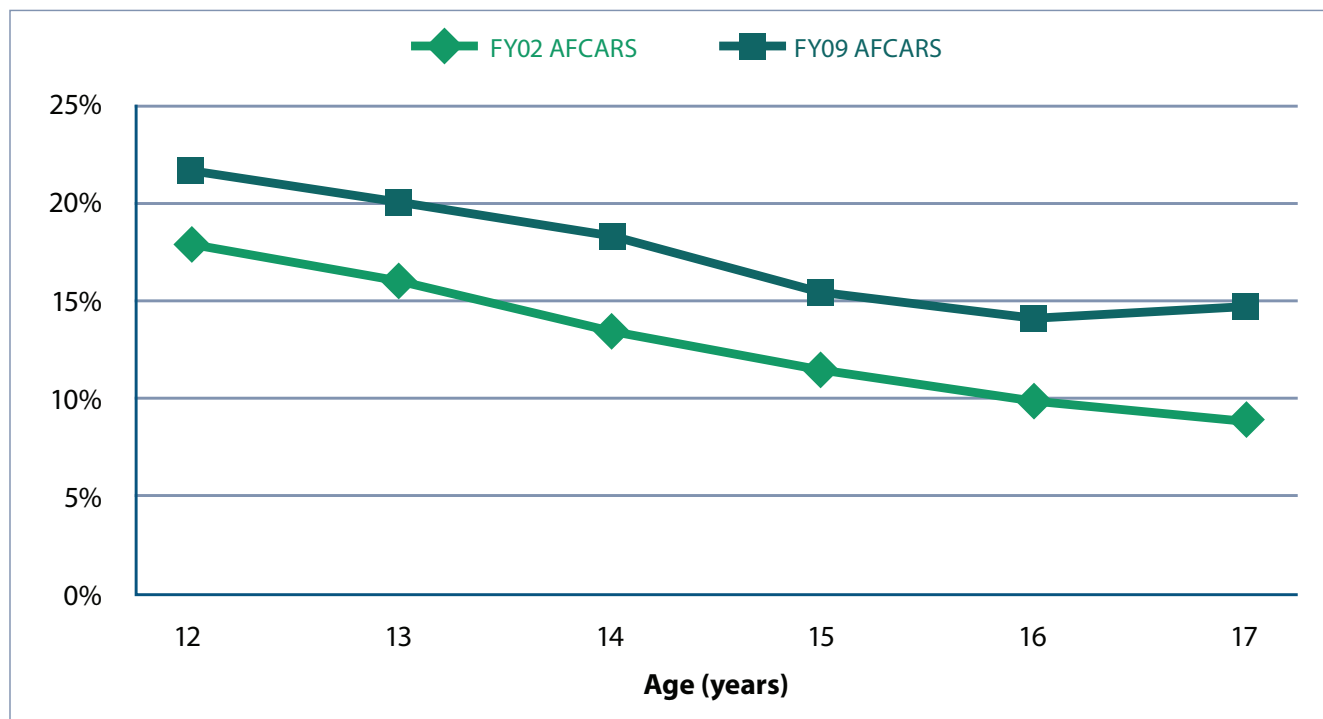
Legal Orphans Adrift

"Legal orphans" are children and youth whose ties to their birth families have been legally severed through the termination of both parents' rights, but who have not yet been adopted (Brown, 2005). As months roll into years in care for these children, they fall into the group of children who are considered "unadoptable," often by

virtue of age compounded by their emotional and behavioral problems (Cushing & Greenblatt, 2009). Figure 1 shows that the percentage of youth

in care ages 12 to 17 whose parents' rights were terminated increased between FY 2002 and FY 2009.

Figure 1. Trends in the Percentage of Youth in Care with Parental Rights Terminated, by Age



Children who are legal orphans face the prospect of aging out of care⁴ with no permanent legal relationship with an adult. Upward trends in the number and percentage of youth who age out of care stand in stark contrast to the decline in both the number of children in care and in the percentage of youth who are assigned the permanency goal of another planned permanent living arrangement.

- Although the total number of children in care declined by over 109,000 between FY 2002 and FY 2009, Figure 2 shows that the number of youth who aged out increased by 45%, from 20,358 in FY02 (7% of all exits) to 29,471 in FY09 (10.7% of all exits) (USDHHS, 2010).

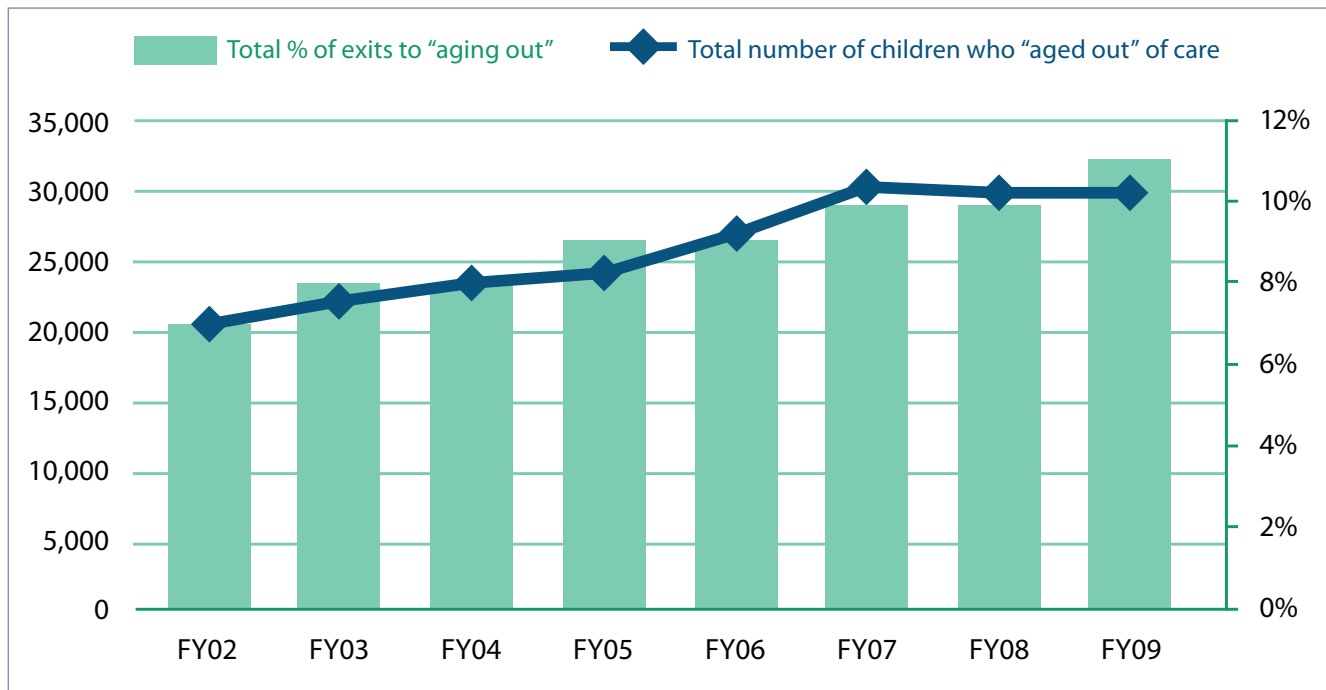
- The large increase in the percentage of youth aging out of care is particularly striking, given that the overall number of children in care, aged 12 to 17 with a goal of another planned permanent living arrangement, declined by 25% during this time frame (USDHHS, 2010).

Other data on legal orphans in care are also cause for concern.

- In 2009, 43% of children with no legal parent resided in either congregate care or “independent living” programs, and another 37% resided in non-relative foster care, while only 8% lived in a kinship placement.
- Almost 60% percent had been in care for at least four years.

⁴ “Aging out” refers to youth who were in a foster, kin, or congregate care placement upon turning 18 (but increasingly may be up to age 21) and who subsequently leave care to live independently without having established any form of legal permanency and often without reliable adults to count on for present or future support.

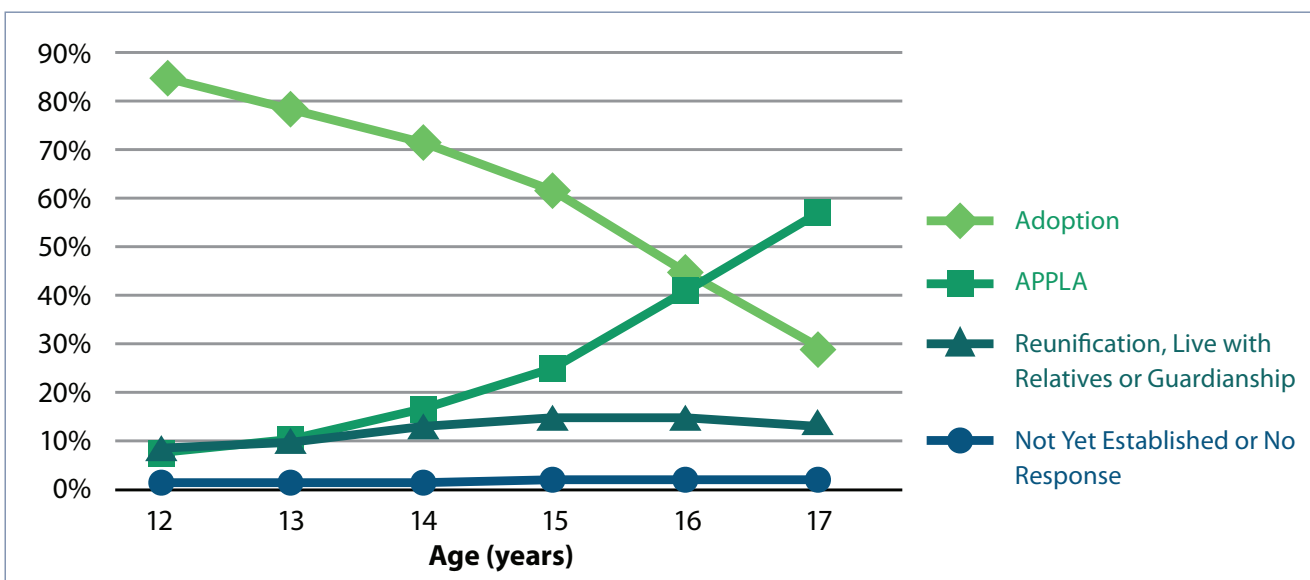
Figure 2. Increase in Both the Number and Percentage of Children “Aging Out,” Despite Overall Exits Remaining Stable (FY09 AFCARS)



- Legal orphans were most likely to be African American and to have a case plan goal of adoption, followed closely by another planned permanent living arrangement (USDHHS, 2010). Figure 3 shows that the likelihood of having a goal of adoption decreases with age, with another planned

permanent living arrangement becoming the most likely plan after age 16 (USDHHS, 2010). Thus, even while there are documented efforts to move children to permanency prior to their 18th birthday, the reality is that there is a sharp upward trend of youth who are aging out.

Figure 3. Most Recent Case Plan Goal for Youth in Care with Parental Rights Terminated, by Age (FY09 AFCARS)



The problems faced by these youth who age out of care have been reported in several landmark studies (Courtney et al., 2007; Havalchak, White, & O'Brien, 2008). In comparison with their peers who have not been in foster care, these youth are more likely to have had at least one episode of homelessness; to drop out of high school and be underemployed; to experience problems associated with drugs and alcohol; to struggle with mental illness; to have a child out of wedlock; and to have become involved with the criminal justice system (Courtney et al., 2007; Havalchak, White, & O'Brien, 2008). Given the discouraging odds for youth who age out of care, it is no wonder that many of them seek to re-establish or maintain connections to birth families, even when parental rights have been terminated.

Seeking Birth Family Connections

With “open adoption” policies (Grotevant et al., 2007), family finding programs, adoption by kin, and the advent of various social networking tools, many youth maintain or seek contact with birth families and other relatives in spite of termination of parental rights orders. The Fostering Connections to Success and Increasing Adoptions Act has made resources available to states in the form of competitive grants for, among other things, intensive family finding technologies that identify and locate relatives, including birth parents, who may serve as permanent families for youth in care. At least one state, Illinois, recently enacted a statute that requires the Department of Children and Family Services, under specified circumstances, to support connections between certain youth in care and their parents whose rights were terminated at least three years earlier (section 2-28(4) of the Illinois Juvenile Court Act of 1987).

A study by Courtney and Barth (1996) of older adolescents who were no longer in care found that “a large proportion of youth who have spent a long time in foster care away from their families nevertheless return to their families at exit from care.” This study also notes, “One of the

most striking findings of this analysis is the fact that such a large proportion of youths (16.8%), regardless of race or gender, who had already spent at least 18 months in care would eventually be placed with ‘family’ at final discharge from care. Over four-fifths of these youth returned to their biological parents.” The possible benefits and harms of such contact have been explored by several studies. These studies suggest that maintaining some level of contact with birth parents, siblings, and other kin, both during and after foster care, is central to the youths’ healthy adolescent development (Bernstein, 2000; Berrick, Needell, Barth, & Johnson-Reid, 2000; Casey Family Programs, 2000).

The prevalence of youth who have aged out of care and who return to live with one or both birth parents, or who have regular contact with them, has been noted by several studies.

- The Midwest Evaluation of the Adult Functioning of Former Foster Youth (Courtney et al., 2005) found that 17% of respondents at the age of 19 were living with a biological parent. Similar to young adults in the general population, this percentage declined as the respondents aged: 7% were living with a parent at the age of 21, and 7% again at the ages of 23 and 24 (Courtney, Dworsky, Lee, & Rapp, 2010; Havalchak, White, & O'Brien, 2008).
- In an earlier study, 53% of 21-year-old young adults who had aged out of care reported having daily contact either with their mother, father, siblings, or grandparents; 83% had contact with at least one birth family member (such as mother, father, siblings, or grandparents) at least once per week (Courtney et al., 2007).
- Other studies have found similarly high percentages of children remaining in contact with their families after discharge from care (Pecora et al., 2005; White, Havalchak, O'Brien, & Pecora, 2006).

As youth themselves have reported, many youth have maintained or re-established contact with their birth parents, irrespective of the legal status of their parents or the length of time in care. This raises the question: could some of these youth have been supported to establish legal permanency during their adolescence with their birth parents who, years earlier, had lost parental rights? Child welfare agencies may want to consider supporting these post-discharge reunifications and connections, regardless of legal status. From a legal perspective, however, if the birth parent(s) had substantially resolved their earlier difficulties and both the parent(s) and the youth want to be legally reunified, it appears that some policy-supported recourse is needed.

A small group of foster alumni who were consulted in preparation for this article unanimously supported the availability of reinstatement as a permanency option for some youth. None of them, in fact, was aware that, in most states, parents cannot regain their rights if their circumstances change and their son or daughter desires reunification, as discussed below. The youth cautioned that reinstatement should be available only if both the youth and parent want to be reunified and that independent assessments confirm that reinstatement would be a safe and appropriate plan. Expanding the permanency options for legally free youth made sense to these young people. As one young advocate remarked, “Even if it is right for one or two youth a year, it is worth it!” Noting that these reunions most often take place without the support and guidance of social workers, they saw a real advantage to having a formal and thoughtful process for re-establishing family relationships.

State Legislation Breaks New Ground

In the absence of statutory authority to reinstate parental rights, youth and their birth parents have had to resort to other means to

re-establish a legal relationship, with mixed results. Reunification on an informal basis leaves children in legal limbo without parental authority or accountability to protect and sustain them. Further, such informal arrangements leave birth parents ineligible for human services that require a parent-child relationship. Laws in many states deny parents whose rights have been terminated legal standing to adopt or obtain legal custody of their birth children (O'Donnell, 2010). In states with statutes that are silent on this issue, some courts have allowed former parents to pursue adoption or custody, while others have not. Even if a parent is allowed to petition to adopt, however, a previous finding of unfitness may automatically disqualify him or her. Affording a birth parent “guardianship” has time-limited value because, in most cases, the legal relationship ends when the youth reaches the age of majority, which in most states is 18 (Mosanyi II, 2002). Another approach that birth parents, having lost their rights, have taken is to seek reversal or vacation of the termination of parental rights. Although reversal generally requires the introduction of new evidence that would likely have changed the result at trial, some courts have vacated termination of parental rights orders on the basis of changed circumstances after entry of judgment (Taylor, 2010).

Based on the growing recognition that existing statutes provided no remedy for legal orphans and their birth parents, states have begun passing laws authorizing reinstatement of parental rights. What might be said to be a slowly growing “legislative trend” led by public policy pioneers began with California in 2005 (section 366.26(i)(2) of the California Welfare and Institutions Code) and was continued by Nevada (section 128.170 of the Nevada Revised Statutes Annotated) and Washington (section 13.34.215 of the Washington Revised Code Annotated) in 2007, Louisiana (article 1051 of the Louisiana Children's Code Annotated) in 2008, Illinois (section 2-34 of the Illinois Juvenile Court Act of 1987) and Oklahoma

(title 10A, section 1-4-909 of the Oklahoma Statutes Annotated) in 2009, and Hawaii (Act 135, 2010 Session Laws of Hawaii) and New York (sections 635 to 637 of the New York Family Court Act) in 2010. Georgia considered, but did not pass, similar legislation in 2010 (Senate Bill 292). This type of legislation is distinct from laws in at least two states that provide for reinstatement of parental rights that were voluntarily relinquished (section 47.10.089(h) of the Alaska Statutes; section 16.1-241(K) of the Virginia Code Annotated).⁵

Since these are relatively new statutes, it is too early to assess the frequency with which this legal option is employed, the legal outcome of resulting petitions, and long-term permanency and well-being outcomes of the children involved. It is unclear whether any state is tracking these cases in a formal way. The Children's Law Center of Los Angeles, however, conducted an informal survey of local judges and attorneys after passage of California's AB 519 and found that the Los Angeles Juvenile Court was hearing approximately one reinstatement petition per month (L. Heimov, Executive Director, Children's Law Center of Los Angeles, personal communication, August 21, 2010).

The impetus for policy change in California was the plight of youth in foster care who had been legally freed for adoption but who were likely to emancipate without achieving legal permanency. Some of these youth had re-established a connection with a parent whose rights had been terminated years before and desired to reinstate the legal parent-child relationship. Although most of these youth desired to reunify with their parents, a few did not want to return to live with their parents and only wanted to end their status as legal orphans (L. Heimov, personal communication, August 30, 2010). Courts,

however, lacked statutory authority to restore parental rights on behalf of such children.

Judges and attorneys for children in California saw first-hand the limitations of existing policy. In a 2004 case, the California Court of Appeals noted the lack of legal options for some older youth in care. It denied a petition to revoke a prior termination of parental rights when a plan of adoption by the youth's birth father failed. The language read:

We join the trial court and county counsel in observing the harshness of the result we reach. Because the court has no jurisdiction, the shared desire of the minor and of the aspiring presumed father must be frustrated despite the fact that the adoption that was anticipated . . . is no longer likely, regardless of whether granting the request would be in the minor's best interest. In all likelihood, Jerred will be left a "legal orphan," despite the recognized disfavor of such status. . . . To avoid such an unhappy consequence, legislation may be advisable authorizing judicial intervention under very limited circumstances following the termination of parental rights and prior to completion of adoption. (In re Jerred H., 121 Cal. App.4th 793 (2004))

Following this invitation from the court, the Children's Law Center of Los Angeles (CLC) and the Judicial Council of California co-sponsored AB 519 in 2005 to allow courts to reinstate parental rights under specified circumstances. CLC argued:

Children who are never adopted should not have to suffer the permanent loss of their legal relationships to their parents, siblings, and other relatives, including their rights to parental support and to inherit from family members. Nor

⁵ In 2009, Minnesota considered, but did not enact, a bill regarding reinstatement of voluntarily relinquished parental rights. Minn. H.F. 1462, § 3.support.

should they bear the stigma of being labeled a legal orphan. (Senate Judiciary Committee Staff Analysis of AB 519, 2005)

The adoption community initially opposed the bill, fearing that it would have a chilling effect on adoptions. They argued that families would be reluctant to adopt children from foster care knowing that a former parent might seek to interfere with a pending adoption by means of the reinstatement process (L. Heimov, personal communication, August 31, 2010). The bill was amended to address the concerns raised by adoption advocates, who ultimately dropped their objections. The enacted legislation provides that only the child may file a petition for reinstatement. In addition, the law provides that only children who are not likely to be adopted and whose best interests would be served by reinstatement are eligible for relief. Although the statute imposes no minimum age requirement on petitioners, it requires a three-year waiting period from the date of termination before a reinstatement petition can be filed, unless the child welfare agency stipulates that the child is not likely to be adopted within that time.

As stated above, passage of AB 519 started a legislative trend. The California legislation was recognized as a new way to address the problem of legal orphans at little or no additional cost to states. States took different approaches to the variety of policy issues presented by reinstatement. For a more detailed description of the statutes, see Appendix A.

Waiting period: A waiting period allows time for achievement of the child's permanency goal, usually adoption. Most states elected to institute a waiting period of one to three years before a reinstatement petition can be filed. Louisiana and Nevada have no waiting period. No state other than California provides for an exception to the waiting period.

Who may file petition: Most states allow the child or the child's attorney, guardian ad litem, or legal custodian to file a petition. Most of these states require the child to have reached a minimum age, ranging from 12 to 15. California and Nevada have no minimum age requirement. A few states allow the child welfare agency to file a petition on behalf of the child and, in Illinois, only the agency can file a petition. New York is the only state that allows a birth parent to file.

Trial home visit: Three states—Hawaii, Oklahoma, and Washington—authorize or require a trial home visit of up to six months before a final order of reinstatement may be granted. Before a trial home visit is ordered, the court conducts a preliminary hearing on the merits of the petition and may grant temporary or conditional reinstatement for the period of the home visit. If the visit is successful, the court will enter a final order. If not, the petition will be dismissed.

Role of child welfare agency: Most reinstatement statutes impose some duties on the child welfare agency. Only California and Nevada do not have such provisions. All of the other states require the agency to submit reports to the court at various stages of the proceedings, including reports that address the parent and child's situation and readiness for reinstatement and the diligent efforts made by the agency to achieve permanency through adoption or guardianship. The three states that require trial home visits require the agency to supervise the visit, develop a permanent plan of reunification, and provide transition support services. Washington has added a requirement that the agency notify an eligible child about the right to petition for reinstatement if the parent contacts the department, supervising agency, or guardian ad litem about reinstatement.

Criteria for entry of reinstatement order: In all states, a court may order reinstatement only if it finds that reinstatement is in the child's best interest. All states except Louisiana also require a finding that the child is not likely to achieve an alternative permanency plan. Half of the states require a finding that there has been a material change in circumstances or that the parent has remedied the conditions leading to termination of parental rights. Three states require the court to consider the age and maturity of the child. Illinois requires the court to consider the specific grounds for the finding of unfitness in the original termination. New York excludes from reinstatement parental rights that were terminated for reasons of severe or repeated abuse. New York also requires the consent of the petitioner in the original termination proceeding (usually the child welfare agency) or a finding that such consent was withheld without good cause.

Effect of reinstatement order on earlier termination decree: Statutes in Hawaii, Oklahoma, and Washington expressly state that an order of reinstatement does not vacate or affect the validity of the original termination order. The Oklahoma and Washington laws add that a reinstatement order acknowledges that conditions since the earlier termination have changed and that reunification is now appropriate.

Implications for Practice Implementation

The new laws will require thoughtful implementation and changes in attitudes and practice, both for courts and for child welfare agency leadership and social work staff. Frank and open conversations between these two systems and among other stakeholders will deepen understanding of the need for this new avenue to permanency.

Child welfare leaders will want to consider how to prepare their social workers for the related, and often complicated, conversations with birth parents and with the youth themselves. Agency heads should think about the professional development needed to support social workers and supervisors in preparing to reconsider a parent against whom, just a few years earlier, they had built a case for termination of rights. As the permanency supervisor of Mark's worker observed:

To get to the point of the termination of parental rights TPR, you need to believe that a parent won't change within the time required by the child's needs and by federal timelines. Considering a reinstatement of parents' rights requires that both agency leadership and social workers need to be open to a new view of the parent and believe that parents can change.

Another issue is ensuring that youth and their attorneys are aware of the right to petition. Some of the young alumni of care consulted for this article recommended establishing processes to inform youth of the reinstatement option after termination of parental rights, but without instilling premature hopes for reunification and turning them against adoption. Washington is the only state whose law requires the agency to notify the youth of this right, but only if the birth parent first contacts the agency or the guardian ad litem. Child welfare agencies, the courts, and guardians ad litem, among others, all share responsibility to ensure that youth in foster care who meet the minimum eligibility criteria are notified of the reinstatement option. Youth and their birth parents should know about this potential pathway to permanency.

Child welfare agency leaders will also want to consider the effect, if any, of reinstatement on a youth's eligibility for independent living services, education and training vouchers, tuition waivers,

Medicaid, and services to support the transition to permanency. The potential for loss of benefits such as these may act as a disincentive to taking advantage of the reinstatement option, and should prompt state policymakers to review and perhaps amend the relevant state eligibility criteria, to the extent that is consistent with federal law. Moreover, these services and benefits can themselves support the transition to permanency through reinstatement of parental rights. For example, youth wondered what provision could be made for extension of post-secondary educational supports similar to those provided to some youth who are adopted from foster care.

Providing for reinstatement of parental rights raises other important questions. Youth wondered what, if any, support would be provided to a young person under the age of 21 in the event of a failed reunification. What will be the impact on siblings? Are there family members who can provide supports for the reunification? How will the child welfare agency assess the birth parent(s) and youth's readiness for such a plan? Are there expectations regarding visits, supervised or not, and trial home visits? What services are needed for the youth and birth parent(s) to prepare for and support a successful transition to reunification, and are there providers prepared to offer these services? Can transition services be provided at the same time as congregate care services or through the congregate care provider? Are there other transitional supports that need to be afforded the older youth and family, services or benefits that would have been available to the youth, had he or she aged out of care? Finally, should the agency conduct research and evaluation to assess impact, outcomes, and shifts in practice?

Conclusion

The trend of large numbers of older youth aging out of care with no legal permanency has shown no sign of abating; in fact, it has increased dramatically in recent years. Without

permanent families to provide support and lifelong connections, the future is bleak for many of those who age out of care between the ages of 18 and 21. Many youth still in care, as well as those who have aged out, have maintained connections with birth mothers and fathers, siblings, and grandparents, both with and without the support of child welfare professionals. Youth long for family connections. Some birth mothers and fathers who, years earlier, had struggled and failed to keep their children safe, subsequently losing their parental rights, have improved their personal circumstances, achieved stability, and strengthened their parenting abilities. Children, once young and vulnerable, have grown older and more competent in their own right. When both youth who have not been adopted and their birth parents are desirous of reunification, these statutes afford them a venue for consideration. It is time to adopt wide peripheral vision and consider laws which allow "looking back to move forward" in the best interest of children.

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Appendix A**Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights**

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
CA Cal. Welfare and Institutions Code § 366.26	At least three years from the date of TPR or earlier if agency stipulates child not likely to be adopted	Child for whom court has determined that adoption is no longer the permanent plan	It must appear to court that best interests of child may be promoted by reinstatement	Social worker or probation officer; child's attorney; child's tribe, if applicable; former parent		Child no longer likely to be adopted; reinstatement is in best interest of child. For child under 12 for whom plan is not reunification, court must specify factual basis for finding that reinstatement is in child's best interest.
HI Act 135, 2010 Session Laws	Child has been in permanent custody for at least 12 months	Child who is 14 or older, child's GAL, department	Preliminary hearing required within 90 days; at preliminary hearing, court may order temporary reinstatement and trial home visit before a final hearing	Former parent, child's GAL, department, child's resource family.	<p>Within 7 days before preliminary hearing, department and GAL shall submit reports to the court that address:</p> <p>Material change in circumstances since TPR, reasons for TPR, parent's and child's willingness to resume contact and have rights reinstated, parent's willingness and ability to be involved in child's life and accept custody;</p> <p>Department shall develop permanent plan and provide transition services to family during trial home visit, if ordered by court;</p> <p>Department may assess trial home visit and rescind it if in child's best interest</p>	At preliminary hearing, court may order trial home placement and temporary reinstatement of parental rights upon finding that there has been material change in circumstances; parent is willing to provide care for child; parent is able to provide safe family home or the home can be made safe with the assistance of services; and trial home visit is in child's best interest. If court issues temporary order, child shall be conditionally placed with parent for up to 6 months. Court will hold hearing after child has been placed with parent for 6 months. At the hearing, court may issue final order of reinstatement and terminate jurisdiction, provided court finds that reinstatement is in child's best interest, taking into account whether parent has remedied conditions, age and maturity of child and child's ability to express preference, likelihood of risk to child, parent is able to provide safe home, both parent and child consent to reinstatement, and permanency plan goals for child have not been met and are not likely to be achieved.

Reinstating Parental Rights — Another Path to Permanency?

Appendix A

Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
IL 705 Ill. Comp. Stat. 405/2-28 and 705 Ill. Comp. Stat. 405/2-34	Three years after parental rights were surrendered or terminated with entry of order appointing guardian with power to consent to adoption	Department of Children and Families on behalf of child age 13 or older, or a child who is a younger sibling of such child age 13 or older for whom reinstatement is being sought and younger sibling independently meets criteria for reinstatement	Petition must contain allegations required by statute; Any party may move to dismiss motion on the basis that parent has intentionally acted to disrupt child's adoption	Parties to the juvenile court proceeding	DCFS shall conduct an assessment of the child's circumstances to assist in future planning, including determining the appropriateness of filing for reinstatement [705 ILCS 405/2-28 requires DCFS to make reasonable efforts on behalf of youth age 13 or older, whose parents' rights have been terminated for at least three years, to locate parent(s) whose rights were terminated, assess appropriateness for custody transfer, and, as appropriate, foster and support connections between youth and parent(s)]	While minor was under court jurisdiction, parent surrendered child for adoption or consented to adoption or had rights terminated and guardian appointed with power to consent to adoption; since then, minor has remained ward of court or returned to care with termination of a guardianship or an adoption; the minor is not currently in placement likely to achieve permanency; reinstatement is in minor's best interest; parent wishes rights to be reinstated and is appropriate to have rights reinstated; more than 3 years has lapsed since consent or surrender or entry of order; child is 13 or older or is the younger sibling of a child 13 or older who is seeking reinstatement and sibling meets other requirements; if court has previously denied motion for reinstatement, there has been substantial change in circumstances. In ruling on motion, court shall consider reasons why child was initially brought to court's attention, the history of the child's case as it relates to parent, and current circumstances of parent. If reinstatement is being sought after finding of unfitness, court shall consider such grounds and also consider "best interest" factors in statute. If case is post-disposition, court shall schedule matter for permanency hearing. Custody shall not be restored to parent except by order of court pursuant to 2-28(4).

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Appendix A**Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights**

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
LA La. Child. Code Ann. art. 1051		Child in foster care over the age of 15		Parents, foster parents, CASA volunteer	Make diligent effort to locate parent and inform him or her of effects of restoration; Submit report detailing change in parent's circumstances, reasons for TPR, willingness of parent and child to have parental rights restored	Best interest of child; consent of parent. Court may allow contact between parent and child, restore parental rights, or place child in the custody of parent, with or without continuing supervision of CW agency. If agency, counsel for child, CASA volunteer, and parent stipulate that restoration of rights or parental contact is in child's best interest, court may enter judgment to that effect without hearing.
NV Nev. Rev. Stat. Ann. § 128.160, 128.170		Child, legal custodian, or guardian of child	Parent must consent in writing to restoration of parental rights	Parents, child's legal custodian or guardian, person or entity that petitioned for TPR, child's attorney		Child who is 14 or older consents to restoration; parent has been informed of legal obligations and rights and is willing to accept them; child is not likely to be adopted; restoration of rights is in child's best interest; for child under 14, court shall specify factual basis of best interest finding.

Reinstating Parental Rights — Another Path to Permanency?

Appendix A

Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
NY N.Y. Fam. Ct. Act, §§ 635-637	Two years after order committing guardianship or custody of child	Attorney for child age 14 or older, agency, or individual to whom guardianship and custody of child have been committed, respondent in the TPR proceeding, or his/her attorney		Court may issue summons to child, guardian and custodian, respondent in TPR proceeding	Court shall direct local CW agency to supervise birth parent during pendency of conditional order restoring parental rights; develop reunification plan; provide transition services; and report to parties, child's attorney, and court 30 days before expiration of the period specified in conditional order	Restoration of rights is in child's best interest, order committing custody of child was based on provisions relating to abandonment, mental illness, or permanent neglect (not severe or repeated abuse), all parties have consented to restoration of rights or, if the petitioner in the TPR proceeding failed to consent, such failure was without good cause. Court shall state its reasons for disposition of the petition. Court may: 1) grant petition, modify order of disposition in TPR proceeding, and transfer guardianship and custody of child to birth parent, provided that the findings of fact on which TPR was based shall remain; 2) Dismiss the petition; or 3) Grant the petition conditionally for up to 6 months during which custody remains with local CW agency and child may visit with or be placed on trial discharge with birth parent. Court shall hold hearing for permanent restoration and state reasons for determination.

Reinstating Parental Rights — Another Path to Permanency?

Appendix A**Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights**

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
OK Okla. Stat. Ann. tit. 10A, § 1-4-909	Three years after TPR	Child age 15 or older	At a preliminary hearing to consider apparent fitness and interest of parent, court finds that best interests of child may be served by reinstatement; application shall be dismissed if parent not located	Department, child's attorney, child, former parent, foster parent or relative guardian, GAL, child's tribe	Department shall provide the court information related to efforts to achieve permanency, including efforts to achieve adoption or permanent guardianship; Department shall develop permanency plan for reunification and provide transition services after temporary order of reinstatement	Court shall conditionally grant application if it finds that child has not and is not likely to achieve permanency and reinstatement is in child's best interest. Court shall consider whether parent has remedied conditions; age and maturity of child and ability to express preference; whether reinstatement will be risk to child; and other material changes in circumstances. If court conditionally grants application, case continued for 6 months and temporary order of reinstatement entered, during which child placed with parent. If child must be removed during 6 months, court shall dismiss application. Court shall hold hearing after 6 months and order reinstatement if placement successful. Court will close deprived action. Reinstatement does not vacate original TPR, but acknowledges change in circumstances. Department not liable for damages, etc.

Reinstating Parental Rights — Another Path to Permanency?

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Summary and Comparison of State Laws Authorizing Reinstatement of Parental Rights

	Waiting Period	Who can file motion or petition	Pre-hearing requirements, procedures	Who must be notified of proceeding	Duties and authority of CW agent	Required court findings and duties/authority of court
WA Wash. Rev. Code Ann. § 13.34.215	Three years after TPR, if child has not achieved permanency	Child age 12 or older, or younger if good cause is shown	Best interest of child may be served by reinstatement of parental rights	Department, child's attorney, child, former parent, existing parent, current caregiver, child's tribe	<p>Provide notice to former parent, existing parent, current caregiver, or child's tribe;</p> <p>Provide to the court information related to its efforts to achieve permanency plan, including adoption or permanent guardianship;</p> <p>Develop a new permanency plan of reunification after conditional grant of petition for reinstatement;</p> <p>If child is eligible to petition juvenile court and parent contacts department, supervising agency, or GAL regarding reinstatement, the department, supervising agency, or GAL must notify child about right to petition for reinstatement</p>	<p>Conditional grant of petition: child has not achieved permanency plan and is not likely to do so; reinstatement is in child's best interest. Court shall consider fitness of parent; age and maturity of child; whether reinstatement poses risk to child; and other material changes in circumstances that warrant granting the petition. Upon conditional grant of petition, case is continued for 6 months, during which child is placed with parent. If child must be removed from parent during this time, court shall dismiss petition. If placement is successful, court order reinstating rights remains in effect and dependency is dismissed. Court order does not affect validity of original TPR but recognizes that situation has changed since TPR. Parent whose rights are reinstated not liable for child support owed to department during period from TPR to reinstatement. State not liable for civil damages resulting from services under this section.</p>