



INFORMATION PACKET

# STRONG FAMILIES

## How have states implemented **parental rights restoration** and reinstatement?

Parental rights restoration and reinstatement is an important option for the small group of youth who have been languishing in foster care and whose parents have managed to address and remedy the issues that prompted the termination of their parental rights.<sup>1</sup> It provides a potential path to permanency for youth who would otherwise age out of foster care. As child advocacy attorney Meredith Schalick asserts (2014), “[I]t is worthwhile to look at all options for permanency for legal orphans created by the child welfare system’s practices and timeframes, including the possibility that, after a designated period of time, the biological parents would be able to provide a safe and permanent family for their biological children.”<sup>2</sup>

Nearly half of states (24 as of August 7, 2017) have passed laws authorizing reinstatement/restoration of parental rights post termination, beginning with California in 2005.<sup>3,4</sup> Over the last 12 years, states have increasingly enacted such legislation to provide children, parents, courts, guardians ad litem, and child welfare agencies with a legal avenue to secure lifelong family connection and permanency for those youth who have ultimately become “legal orphans:”



*In the dependency court system, a legal orphan is a child whose parents’ rights have been terminated and who has no legal permanent connection to a family. The child remains in foster care and has not been adopted or placed in a legal relationship with a guardian or with*

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kin. A legal orphan may have no legal relationship with her parents' extended families, might not inherit from his parents or their families, and is effectively a child of the state. With no family connections, these children frequently age-out of the foster care system once they reach adulthood. At that point, they face statistically poor outcomes.<sup>5</sup>

Several other resources summarize approaches to parental restoration and reinstatement:

## ADDITIONAL RESOURCES

AUTHOR/TITLE/DATE	RESOURCE LOCATION	DESCRIPTION
National Resource Center for Permanency & Family Connections, <i>Reinstating Parental Rights for Youth in Care</i> (2011)	<a href="http://www.nrcpfc.org/teleconferences/04-11-11.html">http://www.nrcpfc.org/teleconferences/04-11-11.html</a>	This webinar focuses on defining legal orphans and explores approaches to reinstating parental rights.
O'Donnell, <i>A Second Chance for Children and Families: A Model Statute To Reinstate Parental Rights After Termination</i> (2010)	<a href="https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/randinote2010.authcheckdam.pdf">https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/randinote2010.authcheckdam.pdf</a>	This article explains how, in limited circumstances, it is in the best interest of the child to vacate an order of termination and reinstate parental rights.
Taylor, <i>Resurrecting Parents of Legal Orphans: Un-Terminating Parental Rights</i> (2010)	<a href="https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ResurrectingParents.authcheckdam.pdf">https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ResurrectingParents.authcheckdam.pdf</a>	Recognizing the need for more uniform solutions to the problems created when a child loses legal rights to his or her biological parents without those rights being replaced through adoption, this article examines the current efforts to address the increasing number of legal orphans created each year.

## Key highlights<sup>6</sup>

As of August 7, 2017, 24 states have provisions for reinstating or restoring the rights of a parent whose rights have previously been terminated. For the court to consider reinstatement or restoration of parental rights:

1. There must be evidence of the parent's substantial progress in correcting the previous conditions that led to the termination of parental rights;
2. The parent must be both able and willing to provide the child a safe, permanent home;
3. The reinstatement/restoration must be in the best interests of the child; and
4. Both the parent and the child must agree to the reinstatement.<sup>7</sup>

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The table below provides highlights from a review of current state legislation:

## HIGHLIGHTS OF STATE RESTORATION/REINSTATEMENT STATUTES

ELEMENT	JURISDICTIONS
The state has a reinstatement or restoration law.	Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Nevada, New York, North Carolina, Oklahoma, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin
If a permanent placement has not yet been achieved within a specific timeframe, the law provides that a petition may be filed with the court requesting reinstatement of the parent's rights.	Arkansas (3 years), California (3 years), Colorado (3 years), Delaware (2 years), Georgia (3 years), Hawaii (1 year), Illinois (3 years), Maine (1 year), Minnesota (3 years), New York (2 years), North Carolina (3 years), Oklahoma (3 years), Utah (1 year), Vermont (3 years), Virginia (2 years), Washington (3 years)
The statute specifies that reinstatement is available only to older children who have not attained a permanent placement.	Arkansas (age 14 or older), Delaware (age 14 or older), Hawaii (age 14 or older), Illinois (age 13 or older), Louisiana (age 15 or older), Minnesota (age 15 or older), Nevada (age 14 or older), New York (age 14 or older), North Carolina (age 12 or older), Oklahoma (age 15 or older), Vermont (age 14 or older), Virginia (age 14 or older), Washington (age 12 or older)
The statute only applies to cases in which an adoptive placement has disrupted.	West Virginia
The statute only applies to cases with previous relinquishment of parental rights.	Alaska (petition for restoration of rights only following voluntary relinquishment of parental rights at any time before an adoption is finalized), Iowa (following infant relinquishment)
The state agency must submit a permanency plan to the court, with reintegration as a permanency goal, that describes the transition services that will be provided to support the child and family.	Colorado, Hawaii, Maine, New York, Vermont, Virginia, Washington
The court may order a trial home placement before the restoration of rights is finalized.	Colorado, Hawaii, Maine, New York, North Carolina, Vermont, Virginia, Washington

### Jurisdictional example: Illinois<sup>8</sup>

Illinois explored reinstatement of parental rights legislation in the late 1990s following the results of a latent class analysis (LCA). Illinois conducted an LCA to help set up performance-based contracting for residential care, and the analysis examined groupings of youth with mild, moderate, and severe needs in congregate care. The analysis found a subset of youth with moderate needs (i.e., those who did not require residential care or psychotropic medication and did not have a history of psychiatric hospitalization) with scores on the Child and Adolescent Needs and Strengths (CANS) tool that reflected strong family ties, yet whose case files indicated prior termination of parental rights (TPR). The Illinois leadership team was curious about these two seemingly disparate indicators and sought to determine the nature of these family

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connections, and asked: *“If these youths’ parents are already TPR’d, then who did they have strong family ties with?”*

As Illinois dug deeper into the data, they found that this group of youth didn’t have any pressing psychiatric needs, but they were likely to remain in congregate care long term because no new permanency options had been identified. The analysis found that this group of youth were consistently running away from their group homes: leaving every Friday to stay at their parents’ homes, and returning to their group homes every Monday morning. The analysis highlighted that this group of kids were also the most likely to age out — they had been freed for adoption, but had not been matched with a permanent family; or they had been previously placed with relatives who then subsequently passed away and the youth were returned to care.

The Illinois team explored this quandary further: *“So we had to ask ourselves, why weren’t they with their families, if they were safe enough for them to be spending every weekend there? Why weren’t we trying to put in supports so these arrangements could be permanent? Well, it was because their parental rights had already been terminated. So what could be done? We weren’t satisfied with the answer that there was nothing we could do; that they would just have to stay in the group homes until they turned 18, and then they could return home. If their parents were safe and stable for them now, why should they be stuck living in the group home?”*

Illinois identified legislation champions, beginning with the Chief Judge, as well as a community advocate and a senator with a background in social work, to help educate the community as to the needs of the small cohort of youth identified, how the legislation could benefit them, and under what conditions it would be used. The legislation ultimately passed in 2010, and Illinois has since used it successfully in select circumstances.

Lessons and tips for other jurisdictions considering introducing similar legislation include:

1. Identify a measurable target population. Examine the current data and historical trends.

2. Use the data to educate stakeholders about the population of youth that this potential legislation would serve. Describe and highlight those youth who might benefit from this avenue for permanency at some point, such as youth aging out of foster care; youth in residential care waiting for permanent families; youth who had previously achieved permanency with legal guardians or adoptive parents who subsequently pass away; and youth whose adoptions disrupt.
3. Take steps to ensure stakeholders are aware of the need for such legislation – and its intended uses. Highlight that the proposed legislation is not a reversal of previous court findings or decisions. Emphasize that it is designed for families where there is an introduction of new findings and new information that gives context for the consideration of reinstatement/restoration as a path to permanency. Note that reinstatement/restoration is not about parental needs or wants, or about overturning successful adoptions, but that it is focused on those children who have yet to achieve permanency or have recently lost their permanent caregivers. Affirm that the proposed legislation concerns those children who are languishing in foster care, children who are legal orphans, and children who will enter adulthood without a stable, safe family.
4. Develop materials and other talking points to convey that this avenue is not about restoring the rights of just any birth parents who have had their rights terminated, but about recognizing that, in a small subset of the foster care population, children who are legal orphans may be able to achieve permanency with their birth parents, as their capacity to parent may have changed with the passage of time, completion of substance abuse or mental health treatment services, and other life changes or introduction of new supports. Initiate a messaging tour to visit stakeholders and share the data and rationale for the proposed legislation, and how it could be used in the field.

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The table below provides other resources regarding jurisdictional approaches to restoration or reinstatement of parental rights:

## JURISDICTIONAL EXAMPLES

RESOURCE	RESOURCE LOCATION	DETAILS
Carter & Widner, <i>Reinstatement of Parental Rights: An Important Step Toward Solving the Problem of Legal Orphans</i> (2011)	<a href="http://bartoncenter.net/uploads/fall2011updates/juv_code_rewrite/CarterWidnerReinstatingParental-Rights.pdf">http://bartoncenter.net/uploads/fall2011updates/juv_code_rewrite/CarterWidnerReinstatingParental-Rights.pdf</a>	This article notes the value of reinstating parental rights by taking a closer look at the problem of legal orphans in Georgia, examining Georgia law, and analyzing the proposal and its projected impact.
Schmidt & Dabney, <i>Restoring Parental Rights: Giving Legal Orphans a Chance at a Family</i> (2007)	<a href="https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/restoring_parental_rights.authcheckdam.pdf">https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/restoring_parental_rights.authcheckdam.pdf</a>	This article describes legislation enacted in California that allows juvenile courts to reinstate parental rights when doing so is in a child's best interest.
Virginia Commission on Youth, <i>Restoration of Parental Rights</i> (2013)	<a href="http://vcoy.virginia.gov/pdf/Restoration%20of%20Parental%20RightsFINAL0114.pdf">http://vcoy.virginia.gov/pdf/Restoration%20of%20Parental%20RightsFINAL0114.pdf</a>	The report describes legislation introduced in Virginia that would establish a procedure for restoring terminated parental rights, including recommendations for legislative change.

- 1 Getman, S. & Christian, S. (2011). Reinstating parental rights: Another path to permanency? *Protecting Children*, 26(1), 58–74.
- 2 Schalick, M.L. (2014). Bio Family 2.0: Can the American child welfare system finally find permanency for 'legal orphans' with a statute to reinstate parental rights? *University of Michigan Journal of Law Reform*, 47(2), 472.
- 3 Child Welfare Information Gateway. (2017). *Grounds for involuntary termination of parental rights*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Retrieved from <https://www.childwelfare.gov/pubPDFs/groundtermin.pdf>
- 4 National Conference of State Legislatures. (2016). *Reinstatement of parental rights state statute summary*. Retrieved from <http://www.ncsl.org/research/human-services/reinstatement-of-parental-rights-state-statute-sum.aspx>
- 5 McCully, S., & Whitney Barnes, E. (2013). *Forever families: Improving outcomes by achieving permanency for legal orphans* [Technical assistance bulletin]. Retrieved from [http://www.ncjfcj.org/sites/default/files/LOTAB\\_3\\_25\\_13\\_newcover.pdf](http://www.ncjfcj.org/sites/default/files/LOTAB_3_25_13_newcover.pdf)
- 6 These highlights build upon previous scans conducted by the Child Welfare Information Gateway, 2017, and the National Conference of State Legislatures, 2016.
- 7 Child Welfare Information Gateway, 2017.
- 8 Telephone interview with Erwin McEwen, July 7, 2017.

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