



## REINSTATEMENT OF PARENTAL RIGHTS

### Overview:

Nearly 10% of children in our nation’s child welfare system “age out” of the system, leaving foster care without a family, meaningful adult connections, or adequate support.<sup>1</sup> Outcomes for these young adults are dismal, with statistics showing startling rates of homelessness and incarceration by age 21.<sup>2</sup>

Every effort must be made to join children in foster care with families so they exit the system with permanent families. But while many teens in foster care are legally free for adoption, only 4% of children 16 and older are adopted.<sup>3</sup> The unfortunate fact is that as foster children get older, finding an adoptive family becomes less likely.

In Arizona, older foster youth are denied one permanency option --- allowing parents who have addressed and remedied the issues that led to their parental rights being terminated to apply for reinstatement of their rights and retake custody of their biological children. For older children and teens lingering in foster care with little to no hope of adoption, the option of returning to a safe and rehabilitated biological family is an option requiring exploration.

### Summary:

### Problem:

Teens who age out of foster care without families face dismal and dangerous outcomes. These children and teens need more paths to permanent families.

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<sup>1</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. [The AFCARS report: Preliminary FY2021 estimates as of June 28, 2022](#), at p.3.

<sup>2</sup> “[Youth Transitioning out of Foster Care: Experienced Homelessness in the Past Two Years in United States.](#)” The Annie E. Casey Foundation, Kids Count Data Center, May 2022; “[Youth Transitioning out of Foster Care: Incarcerated in the past Two Years in United States.](#)” The Annie E. Casey Foundation, Kids Count Data Center, Sept. 2020.

<sup>3</sup> “[Children in Child Welfare System Who Have Been Adopted by Age Group in United States.](#)” The Annie E. Casey Foundation, Kids Count Data Center, Apr. 2023.



## **Solution:**

Biological parents who remedy the issues that led to their children being placed in foster care and their parental rights terminated should have a pathway to apply for reinstatement of their parental rights.

## **Current Law:**

Half of the states allow for the restoration of parental rights.<sup>4</sup>

To ensure the reinstatement of parental rights promotes child safety, stability, and furthers the needs of the child, these statutes all incorporate four general elements:

1. Evidence of the parent's substantial progress in correcting the conditions that led to the termination of parental rights;
2. Ability and willingness to provide the child a safe and permanent home;
3. A finding that reinstatement of rights is in the best interests of the child; and
4. Agreement from both parent and child to the reinstatement.<sup>5</sup>

While the elements are consistent, smaller differences exist among state reinstatement statutes, including:

- Some states limit petitions for reinstatement to older children in foster care, with minimum ages varying from 12 to 15 years of age.<sup>6</sup>
- Several states require a specific timeframe without a permanent placement before a petition for reinstatement of parental rights can be filed.<sup>7</sup>
- One state, [West Virginia](#), only allows a petition for reinstatement when an adoption has been disrupted.

## **Essential Elements of Legislation:**

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<sup>4</sup> ["How Have States Implemented Parental Rights Restoration and Reinstatement?"](#) Casey Family Programs, 5 Feb. 2018, at p.1; Tiano, Sara. ["New Texas Laws Empower Parents Who Had Been Previously Deemed Unfit."](#) *The Imprint*, 27 Oct. 2021.

<sup>5</sup> ["How Have States Implemented Parental Rights Restoration and Reinstatement?"](#) Casey Family Programs, 5 Feb. 2018, at p. 2.

<sup>6</sup> As examples, [Minnesota](#) and [Oklahoma](#) allow a reinstatement petition when a child is 15 or older, [Arkansas](#) and [Delaware](#) at 14 and older, [Illinois](#) at 13 and older, and [Washington](#) and [North Carolina](#) require the child be 12 or older. [Maine](#) does not provide a minimum age for the child.

<sup>7</sup> [Colorado](#) and [California](#) require three years without a permanent placement, [New York](#) and [Virginia](#) require two years, and [Maine](#) requires one year. [Nevada](#) has no requirement.



Minor elements in state laws may vary, but certain requirements should be incorporated into all parental reinstatement laws to maximize successful outcomes, establish parental preparedness, and ensure child safety.

States should:

1. Utilize the heightened clear and convincing evidentiary standard when determining whether parents have demonstrated the remediation necessary for a reinstatement of their parental rights.<sup>8</sup>
2. Refrain from requiring an age limit for the child to allow proceedings to be specific to each child. However, no petition should be allowed within the first two years after severance. In the cases of disrupted adoptions, time spent as an adopted child before the disruption may count toward this two-year timeframe.
3. Require a thorough investigation by the Department of Child Safety and a trial home placement before granting a reinstatement petition.
4. Prohibit the reinstatement of parental rights in cases of severe physical abuse as defined in A.R.S. [§8-201\(34\)](#) and certain criminal convictions, including terminations of parental rights based on sexual abuse, conduct that resulted in the death of a minor, and crimes outlined in [A.R.S. §13-705](#).<sup>9</sup>
5. Require that the child and his or her legal representative, not the parent, file the petition for reinstatement of parental rights.<sup>10</sup> This provides an additional layer of screening by the child's lawyer and DCS, ensuring the petition for reinstatement is in the child's best interests.
6. Require evidence that the state has made diligent efforts to locate a permanent home for the child and the child is unlikely to obtain a permanent placement outside of a reinstatement of parental rights. Petitions for reinstatement should be prohibited if the child is in an adoptive placement.<sup>11</sup>
7. Provide an attorney to represent the child's interests throughout the reinstatement process. If the court determines the petition can proceed

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<sup>8</sup> [Nevada](#) and [Oklahoma](#) use the lower "preponderance of the evidence" standard, but the majority of states, including [Delaware](#), [Illinois](#), and [Virginia](#), apply the heightened "clear and convincing" standard.

<sup>9</sup> [Minnesota](#), [Colorado](#) and [New York](#) provide examples of situations where reinstatement is not an permitted.

<sup>10</sup> States vary on who can file a petition for reinstatement, but allowing children to petition the court for reinstatement, through their representative, provides an additional layer of screening by the child's lawyer and Department, and ensures the petition for reinstatement is in the child's best interests and is being filed with the child's consent.

<sup>11</sup> [Colorado](#) is one of several states with this requirement.



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and the parent consents to the legal process, appoint an attorney to represent the parent.

8. Require the Department of Child Safety to track and report the number of reinstatement petitions that are granted and the number of children who return to their biological parents via this specific legal mechanism, as well as the number of subsequent disruptions after reinstatement, if any.

## Anticipated Impact

The primary impact will be uniting children and teens in foster care with safe, biological families, providing permanency and a positive exit from foster care.

A secondary impact, shown by an Illinois study, is that successful petitions to reinstate parental rights may serve to reduce the number of youths who routinely run away from group homes to visit their parents on weekends and return to the group home after the family visit.<sup>12</sup>

Finally, these laws give parents who have worked diligently to change their circumstances for the better a second chance at reuniting with their children.

### Pull Quotes:

**“Those of us representing families and kids know that you could have your rights terminated for a myriad of reasons, and many of them may not be applicable years later.”**

- Attorney Vivek Sankaran, director of the Child Advocacy Law Clinic at the University of Michigan Law School.<sup>13</sup>

**“There are children languishing in foster care, going from home to home and sleeping in CPS offices – when they have a willing, able parent to take care of them.**

- Cynthia Simons, a fellow at the Texas Center for Justice and Equity<sup>14</sup>

## Stories

<sup>12</sup> [“How Have States Implemented Parental Rights Restoration and Reinstatement?”](#) *Casey Family Programs*, 5 Feb. 2018, at p.3-4.

<sup>13</sup> Tiano, Sara. [“New Texas Laws Empower Parents Who Had Been Previously Deemed Unfit.”](#) *The Imprint*, 27 Oct. 2021.

<sup>14</sup> Id.



## **Maggie Luna**

When Maggie Luna's husband abruptly abandoned her, she was evicted and left to raise three young children on her own. Desperate and alone, she turned to drugs and ultimately went to prison. Her children were placed in foster care and Luna became depressed and hopeless.

Luna's turning point came with a visit from her oldest daughter, who was living with a relative. The mother and daughter developed a renewed relationship that helped Luna recover. Luna's son was still in foster care and Luna, released from prison, resolved to get him back.

Luna is now five years sober with a stable house and an empty bedroom she refuses to rent in case her son returns. Luna's son, now 11, has been in foster care for six years and is unlikely to be adopted. Under a new Texas law that Luna helped champion, and with the written support of multiple state lawmakers, Luna intends to petition the court to restore her parental rights and bring her son home.<sup>15</sup>

## **Stephen**

Stephen entered foster care in California when he was 3 years old. His father abandoned the family and Stephen's mother began abusing drugs and alcohol. Parental rights were terminated 12 months later.

Seven years later, Stephen was still in foster care. He had lived in numerous foster placements, experienced a failed adoption, and was living with his elderly grandmother when Stephen asked if he could live with his mother. Now sober and living in an apartment in a safe neighborhood, Stephen's mother had changed her life for the better and remedied the circumstances that led to Stephen's entry into foster care. Stephen was approved to visit his mother, first at fast food restaurants, and ultimately for overnight visits. Stephen and his mother developed a stable and safe relationship and Stephen described his hope for a "real family" with her. Stephen was overjoyed when the court granted the reinstatement of parental rights and Stephen returned to his mother's care.<sup>16</sup>

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<sup>15</sup> Id.

<sup>16</sup> Schmidt, Cameryn, and Brenda Dabney. "[Restoring Parental Rights: Giving Legal Orphans a Chance at a Family](#)." *ABA Center on Children and the Law*, Jan. 2007, pp. 170-171. ("Stephen" is a composite client drawn from several clients who filed petitions to restore parental rights in California.)