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Second Chance Parenting: Restoring Parental Rights

Key Points

- While almost half of the states have implemented a reinstatement of rights statute, this option has yet to be extended to Texas families.
- In 2018, over 5,000 children in Texas were separated from their parents whose parental rights were terminated.
- With more than 1,200 youth aging out of the Texas foster care system each year, a process for reinstating the rights of parents who have rehabilitated may be in the best interest of many of these youth.
- Texas should move toward implementing a reinstatement of parental rights statute to ensure children and families have every option available to promote safety and stability.

Executive Summary

At any given moment, thousands of children in the United States and Texas are waiting to be adopted out of the foster care system. Many will age out of care before they can obtain an adoptive family, often leading to a life of instability and increased hardship. In Texas alone, approximately 1,200 youth age out each year ([Texas Department of Family and Protective Services, n.d.-b](#)). While adoption is often the only option for a child to achieve permanency, some children have unique family circumstances, with some even continuing to cultivate the parent-child relationship post-termination. The identification of this subset of the overall foster care population has led many states to pursue a mechanism for reinstating previously terminated parental rights.

Although Texas has yet to enact a statute allowing for this permanency option, there is a population of foster youth who would likely benefit from such a process as an alternative to emancipation. When parents have re-established their fitness, and both the child and parent wish to reunite, this option would provide a healthier and more restorative alternative to emancipation.

Introduction

The purpose of the child welfare system is to protect children who are in imminent danger of harm and to help their families rehabilitate, promote safe environments, and increase familial strength and stability. However, after a removal occurs, families may experience especially strenuous circumstances that prevent them from reaching stability within the 12 months required by the Adoption and Safe Families Act ([1997, Sec. 302\(2\)](#)) and Texas Family Code Section 263.401, after which Child Protective Services (CPS) may move to terminate the parents' legal relationship with the child.

Oftentimes parents involved in the child welfare system voluntarily relinquish their rights out of fear of repercussions or lack of understanding of their due process rights. Other situations lead to an involuntary termination of parental rights. However, this termination does not necessarily terminate the parent-child relationship, it simply terminates the legal authority of the parent regarding that child. Some families continue to cultivate relationships post-termination, a situation commonly seen in cases involving substance abuse, with one study finding 94% of children whose parents had their parental rights terminated feel somewhat or very close to at least one biological family member ([Adams, 2017](#); [Courtney et al., 2011, p. 13](#)). Additionally, many children who run away from care are attempting to reunite with their birth family—indicating that familial connections remain strong even after separation ([National Center for Missing and Exploited Children, n.d., “Risk Factors” section](#); [Texas Department of Family and Protective Services \[DFPS\], 2020](#)).

Child welfare agencies seek permanency for any child in their conservatorship, often citing adoption as the case-plan goal. However, many children await adoption for years, and the lack of permanency in the child welfare system has led to tens of thousands of children aging out of the system over the years without a permanent home or legal familial ties ([Children’s Bureau, 2019](#)). Unfortunately, this lack of permanency is accompanied by a variety of negative health, educational, and economic outcomes ([youth.gov, n.d.](#)).

One unique solution to the problem of aging out is creating an avenue for parents to re-acquire the custody of their child(ren) through the reinstatement of their parental rights. When a parent has rehabilitated and can provide a safe and stable home, and both parties—the child and the parent—wish to reunite and re-establish their legal relationship, reinstatement of parental rights is an option to explore. Although the intentions behind reinstatement are most commonly for the family to fully reunify and cohabit, reinstatement can also provide an avenue for inheritance or medical decision rights to be reallocated to the birth family. Reinstatement of parental rights statutes allow families to reunite once each party has been given the time to recover from previous trauma and the reinstatement is found to be in the best interest of the child, providing additional avenues to permanency for children in the system ([Schalick, 2014](#); [Adams, 2017](#); [Casey Family Programs, 2018](#)).

The Identified Need for Reinstatement

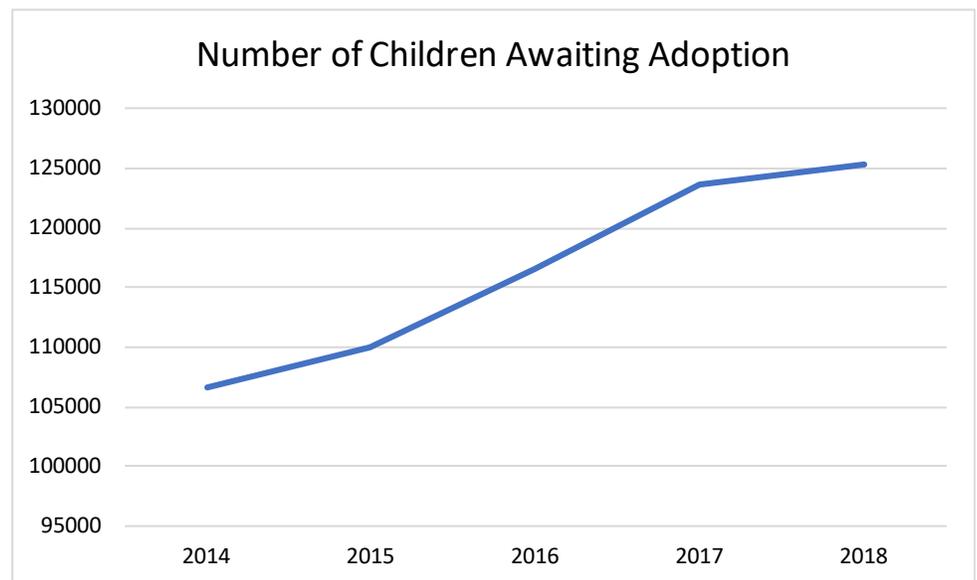
Over the past 5 years, both the number of children with terminated parental rights awaiting adoption and the percentage of children in care awaiting adoption have been consistently increasing ([Children’s Bureau, 2019](#)). In FY 2018, over 125,000 children in the United States were waiting for adoption ([p. 1](#)). While foster care is intended to be a safe place for children, in 2017, over 18,000 children were reported missing from care to the National Center for Missing and Exploited Children ([n.d., “By the numbers” section](#)). In some cases, children run away to reunite with their birth family. By attempting to escape the system, these runaway children are at risk of further victimization and trauma ([“Risk Factors” section](#)). While some are recovered, others are never returned to safety.

Among the children who stay in foster care and are not adopted before reaching the age of majority, these youth age out of care and become legally emancipated with no permanent placement or legal familial ties. This lack of permanency has become a growing concern for the child welfare community as aging out of foster care is linked to a myriad of negative longitudinal outcomes such as unstable housing or homelessness, unemployment, lower levels of education, poor health, and increased involvement with the criminal justice system ([youth.gov, n.d.](#)).

One longitudinal study ([Feng et al., 2020](#)) found that almost a third of emancipated youth experience homelessness before the age of 21. Additionally, youth who ever experienced a placement in a congregate care setting—a common placement for youth awaiting adoption—were more likely than their peers to experience homelessness. However, youth who had higher levels of perceived tangible support through relational networks were 44% less likely to experience homelessness.

Lack of stability and group placement settings have been found to be predictors of violent and non-violent criminal behavior for older youth, and to increase the risk for arrest, even after controlling for prior behavior problems ([Cusick, 2011](#)). Additionally, one study found that 45% and 41% of emancipated youth, respectively, had trouble with the law or spent time in jail within 6 months of leaving care ([Reilly, 2003](#)).

Figure 1
Increasing Number of Children Awaiting Adoption in the United States



Note. From *The AFCARS Report*, by Children’s Bureau, 2019, (<https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>).

Due to these persisting permanency issues, states began identifying populations that had the potential to benefit from reinstatement statutes. For example, prior to implementing a reinstatement statute, an Illinois analysis identified a subcohort of youth who had strong parental ties and only moderate needs. The youth who formed this group were in long-term congregate care, consistently ran away from their group homes to stay with their parents, and were likely to age out of the system with no permanent placement. This led Illinois to pursue a process for reinstating parental rights when it is a safe and mutually desired option as a healthier alternative to aging out of the system ([Casey Family Programs, 2018](#)).

Reinstating parental rights mitigates the risks associated with extended time in foster care and aging out by providing stronger and more permanent familial and social support networks, therefore increasing youth stability. Though, to clarify, the intentions of reinstatement statutes are not to reunify families for the sake of lowering the number of legally emancipated youth, or overturning in-process or finalized adoptions, but rather to provide an additional permanency option that may be in the best interests of children who are at risk of emancipation.

Characteristics of Current Statutes

Although some states already had avenues for parents to regain legal rights to their children, the process was ambiguous and convoluted, leading to the desire for specific statutes that provide clear criteria and processes when considering reinstatement ([Schalick, 2014, pp. 480-481](#)). Beginning with California's reinstatement statute passed in 2005, several other states have followed suit and passed laws creating a reinstatement process; as of 2017, 24 states provide legal avenues for the reinstatement of previously terminated parental rights ([Casey Family Programs, 2018, p. 2](#)). However, these statutes have varying characteristics and elements surrounding the process, such as requirements surrounding the minimum age of the child, the amount of time required to pass post-termination, the court process, and who has the standing to file the petition.

Minimum Age and Time Restraints

As reinstatement requires consent of both parties, the parent and the child, some states have chosen to require a minimum age the child must meet prior to petitioning for reinstatement. Among states requiring a minimum age, most require the child to be between 12 and 15 years old, with some allowing for exceptions for younger children with extraneous circumstances. However, some states such as California and Nevada do not require a minimum age, though Nevada still requires a specific amount of time to pass after termination before reinstatement can be pursued ([Schalick, 2014, pp. 483-484](#)).

Requiring a specific amount of time to pass post-termination is a restriction utilized by some statutes with the goal of ensuring all other adoption options have been fully explored, with most states requiring a period of 1 to 3 years to pass ([Schalick, 2014, p. 484](#); [Casey Family Programs, 2018, p. 3](#)). While this post-termination time restraint may be well-intentioned, in some cases, it may be counterintuitive to the goal of acting in the best interest of the child. Although it is critical to explore alternatives when reunification is not a viable permanency option, utilizing a blanket time restraint will not prove a parent's ability to provide a safe and stable environment for their child; alternatively, it is the unique actions and behaviors of said parents that provide the credibility to their rehabilitation. Statutes on reinstatement are intended to be centered around the fact that the agency should always act in the best interest of the child, not provide a checklist of one-size-fits-all items.

Court Process

The court process surrounding reinstatement is unique to each state, with some requiring only a preliminary hearing determining whether certain criteria have been met prior to pursuing reinstatement, and others requiring a trial home placement period before restoration can be finalized. Currently, eight states utilize trial home placements, allowing state child welfare agencies to supervise the placement and maintain custody of the child prior to the finalization of reinstatement ([Casey Family Programs, 2018, p. 3](#)). The initial criteria include time since termination, feasibility of alternative adoption, and the absence or presence of desire of the child and parent to be reunited. Additionally, the established burden of proof is an important factor for courts to consider. Most states require "clear and convincing" evidence that reinstatement is in the child's best interest—the same burden of proof needed to terminate parental rights ([Schalick, 2014, pp. 484-485](#)).

Involuntary vs. Voluntary Termination

As there are two avenues to terminating parental rights—through voluntary relinquishment or involuntary termination—some states have made a distinction between the two methods within their reinstatement statutes by prohibiting parents who were *involuntarily* terminated from filing. For example, the Alaska statute allows only parents who voluntarily relinquished their rights to request a review of their previous termination ([Adams, 2017, p. 525](#)). However, terminating parental rights is "a continuum rather than a dichotomy" of voluntary and involuntary, as this fact alone is not a sufficient explanation of the underlying facts of the case, such as the severity of maltreatment or the potential for rehabilitation, nor does the method of termination reflect the parents' agreement or disagreement with the action ([p. 526](#)).

This continuum is acknowledged in practice, as some statutes identify the two methods as equal. The Texas Family Code, Section 102.006, prevents parents who had their parental rights terminated from adopting with no differentiation between the method of termination. When states fail to accept this continuum and choose to differentiate from voluntary and involuntary termination, they are both misinterpreting the complexity of the termination process and intrinsically punishing parents for exercising their right to due process and their attempt to maintain the fundamental right of the care, custody, and control of their children prior to the termination (*Troxel v. Granville, 2000, 530 U.S. 57*).

Petition Powers

A major defining characteristic among statutes is who is and is not allowed or required to file a petition for reinstatement. While some states allow the child, parent, or agency to file, others are less inclusive, prohibiting certain parties such as the parent from filing for reinstatement. For example, the statutes of four states—California, Oklahoma, Washington, and Utah—allow only the child or the child’s legal representation to act as the moving party. In contrast, the most recent version of Minnesota’s reinstatement law, passed in 2019, allows the parent or county attorney to file but excludes the child (*Schalick, 2014, p. 482; HF 554*).

Although parents have an established fundamental right over the care, custody, and control of their children when they are fit to parent, when there is clear and convincing evidence that these rights should be terminated, the priority then becomes acting in the best interest of the child

(*Troxel v. Granville, 2000, 530 U.S. 57*). However, if post-termination a parent has rehabilitated to reach stability and established fitness to parent, they may then, in fact, become the placement option that is in the best interest of the child.

Some states have chosen to eliminate the parent’s option to petition in an attempt to block parents from misusing the reinstatement process, petitioning without consent of the child, or using the process to halt pending adoptions. While this can happen, this argument is likely stemming from the pretense that parents with terminated rights are innately malicious and reinforcing the false idea that some parents are incapable of rehabilitation.

A delicate balance must be reached between providing parents the right to petition and ensuring children are protected during the process. These concerns may be mitigated through other statutory provisions, such as a mandatory age, the nature of the notification of filing, trial home visits, or supportive transition services.

Current Need and Considerations for Texas

Though thousands of Texas youth will never reach permanency, unlike many other states, Texas does not currently have a reinstatement of rights process in statute. In 2018, over 5,500 children had their parents’ rights terminated (National Data Archive on Child Abuse and Neglect, personal communication, 2020). Additionally, as of August 31, 2019, Texas had nearly 7,000 children in care waiting to be adopted, with almost half of those children in a placement setting that is not intended to be permanent (*DFPS, n.d.-a*).

Table 1
Common Elements Included in 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
The law requires a specific timeframe post-termination before filing.	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 law specifies an age the child must meet without reaching permanency prior to filing a petition.	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 state agency must submit a reunification plan that details the supportive transition services that will be provided.	Colorado, Hawaii, Maine, New York, Vermont, Virginia, Washington
The court may order a trial home placement prior to finalizing restoration.	Colorado, Hawaii, Maine, New York, North Carolina, Vermont, Virginia, Washington

Note. From *How Have States Implemented Parental Rights Restoration and Reinstatement?* by Casey Family Programs, 2018, p. 3 (https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Parental_Rights_Restoration_Reinstatement.pdf).

Some might assume the majority of these children ended up in care due to physical or sexual abuse, but among all children in care in FY18, over 70% had alcohol or drug abuse cited as a removal reason and 90% had neglect cited as a removal reason (National Data Archive on Child Abuse and Neglect, personal communication, 2020). These two issues are often co-occurring, and neglect is commonly situational, caused by poverty-related barriers rather than an intentional behavioral issue of the parent ([Casey Family Programs, 2013](#); [Milner & Kelly, 2020](#); [Slack et al., 2004](#)). Although substance abuse can sometimes severely inhibit a person's ability to parent, in some cases, it may be difficult to determine the presence of the clear and convincing evidence required to terminate a parent's rights due to the inability to properly predict the likelihood of a parent's rehabilitation. The high rates of these two maltreatment types combined with the thousands of children awaiting adoption suggest there is a unique group of children who may benefit from a reinstatement process.

Additionally, as youth are awaiting adoption, many will run away from care. In FY 2019, over 2,100 children were missing at some point while under DFPS supervision ([DFPS, 2020, p. 1](#)). About one third of the youth who go missing have parents with terminated rights, and 90% are between the ages of 12-17 ([pp. 3, 5](#)). Additionally, the majority of these youth go missing from congregate care settings—a type of placement that is intended to be non-permanent and often used when a child is awaiting adoption ([p. 4](#)). Among the youth recovered by DFPS who completed a recovery survey, 15%, about 270, of the youth claimed they ran away due to a desire to see their family or relatives ([p. 2](#)). Although it is unclear what portion of these youth were legal orphans, this suggests that there is a demographic within foster care that continues to pursue and uphold familial relationships and reaffirms the potential benefit of a reinstatement option.

If these youth with parents who have terminated rights are not adopted before they reach the age of 18, they will legally emancipate. In 2019, over 1,200 youth aged out of care in Texas, therefore becoming at risk of experiencing higher rates of justice system involvement, adverse health, behavioral, and social outcomes, and an increased risk of poverty and subsequent welfare dependency ([DFPS, n.d.-b](#); [youth.gov, n.d.](#); [Feng et al., 2020](#)). Among those, some have been awaiting adoption for years; over the past 10 years, the average time in care prior to emancipation was 53.5 months—or more than 4 years ([DFPS, n.d.-b](#)).

Unless given a court-granted extension, under [Section 263.401](#) of the Texas Family Code parents are provided only 12 months to initially prove themselves stable and fit

to parent. While in some cases reunification can be safely completed in a much shorter amount of time, some families struggle to reach stability prior to the final permanency hearing, leading them to lose custody of their children. In one study, several judges noted that while they understand the negative effects associated with dysfunctional parenting, they also recognize that 12 months is often not a sufficient amount of time to rehabilitate for substance abuse or mental health issues ([Ellis et al., 2009, p. 9](#)). Additionally, a 2016 interview with a Texas Department of Family and Protective Services spokesman acknowledged that some families are unable to sufficiently address their risk factors under the time restraints given, leading to a termination of rights ([Crary, 2016](#)). As mentioned, although in most cases 12 months is an appropriate amount of time to allow for timely permanency, reinstatement is a beneficial option for families who fail to meet that deadline.

Policy Recommendation

To increase the options available that allow the state and families to act in the best interest of children, Texas should move to add a statute for reinstatement. The reinstatement statute should:

- a) allow the parent, child, or agency to act as the moving party;
- b) allow both parents who voluntarily and involuntarily had their rights terminated to qualify for reinstatement; and
- c) have a lower threshold for the timeframe post-termination prior to filing.

As reunifications often utilize monitored return periods to ensure the safety and success of the reunification, Texas should utilize the same monitored return process, described in Section 263.403 of the Texas Family Code, as a trial period for families. The monitoring period should be limited to no more than 180 days, during which the agency can connect the family to services that tailor to their individual needs and will promote stability and restoration.

Prior to the trial home placement, the initial reinstatement hearing should carefully review any risks associated with pursuing reunification. This review should focus solely on the issues pertaining to the initial civil case and the directly related events that occurred thereafter. For example, if drug abuse was the major factor in the removal and termination, evidence of significant rehabilitation must be evident through the parent's actions post-termination. Reviewing each petition through the lens of the specific case rather than if the family has met a specific checklist of criteria leaves room for flexibility surrounding the restrictions within the reinstatement statute—such as length of time

since termination. Finally, this review can also identify the specific programs that should be included in the family's service-plan during the period of monitored return.

Conclusion

With thousands of children awaiting adoption and emancipating from Texas foster care each year, there is an identified need to expand the permanency options for children. By prohibiting reinstatement of rights and re-adoption, Texas laws are inadvertently subscribing to the pretense that parents are incapable of rehabilitation. However, with

complex and multidimensional issues such as substance abuse and neglect largely contributing to the number of children in care, the state must take a dynamic and responsive approach to permanency, and maintain focus on restoration, rather than punishment. Allowing for the reinstatement of parental rights is an acknowledgment that families can be rewarded for positive change and would be a step in the right direction as the child welfare system continues to move toward a more restorative approach. ★

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