

**A SECOND CHANCE FOR CHILDREN AND FAMILIES:
A MODEL STATUTE TO REINSTATE PARENTAL
RIGHTS AFTER TERMINATION**

Randi J. O'Donnell*

There are more than half a million children in foster care in the United States. Some of these children are adopted into loving families, but many are considered hard to adopt and never find a permanent family. Research suggests that the outlook for the teens who exit or age out of foster care without a permanent home or a meaningful adult relationship is bleak. They are more likely to face homelessness, joblessness, drug addiction, early pregnancy, mental health problems, and prison time. With such grim statistics, states should explore every possible permanent family resource for youth in foster care. This Note proposes that, in limited circumstances, it is in the best interest of the child to vacate a final order of termination and reinstate parental rights. It calls for states to adopt a model state statute based on the five state statutes currently in place that already allow for the reinstatement of parental rights.

Keywords: *reinstatement of parental rights; foster care; termination of parental rights; aging-out; permanency planning*

“I’ve always run, because I love my family . . . I would go to the end of the Earth just to sleep on the sidewalk beside my family.”—Timothy, age 15¹

“The way families are drawn together against all odds . . . is exemplified by just how many kids . . . we see aging out of the foster care system and where do they go? They go home . . . even kids whose parents’ rights have been terminated . . . The bonds that hold families together are powerful, and often the system works to strain or shatter or destroy them rather than build on them.”—Foster Care organization representative²

I. INTRODUCTION

David is an eleven-year-old boy in foster care. The parental rights of his mother, Lisa, were terminated because she was homeless and addicted to drugs. Four years later, his mother has completed a drug rehabilitation program, secured permanent housing, obtained a job, and is doing well. David is now fifteen years old. Because of his tumultuous childhood and the separation from his mother, David has difficulty listening to authority and frequently gets into fights at school and in his foster care placements. Because of his behavior he has not been with a family long enough to form an attachment leading to adoption. Rather, he has been moved in and out of four foster homes and is currently residing in a group home where he is expected to remain until he ages out of foster care.³ David and his mother have maintained contact over the years through frequent telephone

Correspondence: riodonne@gmail.com

calls and visits. They have rebuilt their relationship and they want to reunite and reestablish their parent/child ties. Unfortunately, the law does not allow for their wishes to be realized in all but a handful of states.⁴

Currently there are more than half a million children in foster care in the United States.⁵ Many of these children maintain connections with their biological parents while they are in foster care and even after their parents' rights have been terminated.⁶ Some of these children are adopted into loving families, but many are considered hard to adopt and never find a permanent family.⁷ Teenagers, children with special physical and emotional needs, and children who are part of a large sibling group are often considered very hard to adopt.⁸ As of December 31, 2007, there were 130,000 children in foster care waiting to be adopted.⁹ Rather than being raised in a healthy home, they become legal orphans, separated from their siblings, languishing in foster care, moving in and out of different foster homes and residential facilities until they reach the age of eighteen or twenty-one, depending on the state in which they reside.¹⁰ Indeed, approximately 25,000 youth age out of foster care each year with no connection to a parental figure.¹¹ Children in foster care are a particularly vulnerable population. When compared to at risk children raised in a single-parent low-income household, foster children are still more likely to suffer from developmental delays, emotional and psychological problems, with 30–40% suffering from a chronic medical problem.¹² Since nearly all children in foster care have been abused or neglected to some degree, it seems logical that they would suffer from more problems than children who are not in foster care. However, the problems that originate before these children enter foster care are often exacerbated by prolonged placement and a life in motion in the foster care system.¹³

In spite of the abuse or neglect they have already suffered, many foster children feel a tremendous sense of loss and abandonment at being separated from their biological families as well as the familiar surroundings of their schools and communities.¹⁴ Many view the separation as a form of punishment and blame themselves for it.¹⁵ As a result of such separation, foster youth may become withdrawn from their relationships and reluctant to engage in social activities that are a critical part of childhood and the maturation process.¹⁶ In addition to the emotional turmoil they have experienced, children in foster care suffer from higher instances of illnesses, fragmented health care, and delays in cognitive and academic functioning as a result of moving around so often.¹⁷ A recent nationwide study concluded that, "15–20% of foster families have problems in their home environment, family functioning, and parenting."¹⁸ There have also been numerous studies demonstrating that children in foster care frequently suffer physical and sexual abuse at the hands of their foster families.¹⁹ Clearly this does not bode well for an already fragile population of children.

Unfortunately, research suggests that the outlook for the teens who exit or "age out" of foster care without a permanent home or a meaningful adult relationship is bleak.²⁰ Moreover, "poorer-outcomes—both in terms of psychological well-being and subsequent involvement with the juvenile and criminal justice systems—have been associated with the absence of quality adult relationships in young people's lives."²¹ These teens are more likely to face homelessness, joblessness, drug addiction, early pregnancy, mental health problems, and prison time.²² Yet nationally, nearly 25,000 young people age out of foster care every year without the support of a family or caring adult legally committed to helping them address these challenges and make a successful transition to adulthood.²³

With such grim statistics, states should explore every possible permanent family resource for youth in foster care. This is particularly so in light of the passage of the

Adoption and Safe Families Act (ASFA) in 1997 and the Foster Care Independence Act (FCIA) in 1999, and, most recently, the Fostering Connections to Success and Increasing Adoptions Act (FCSIA) in 2008.²⁴ The driving force behind ASFA was to establish a sense of permanency and well being for foster children primarily through adoption.²⁵ The Act proposes to achieve this goal by minimizing the amount of time children spend in foster care. Under the ASFA requirements, if a child is in foster care for fifteen of the past twenty-two months, the state agency must file a petition to involuntarily terminate a parent's rights.²⁶ Many states have adopted this ASFA standard or similar restrictions on the amount of time children can remain in foster care with their parental rights still in tact.²⁷ The sooner a parent's rights are terminated, the sooner a child can be freed for adoption. However, as has already been noted, many children are not adopted. In the case where a child has not been adopted, all other options for a permanent home should be explored.

As five states have already recognized,²⁸ another option for permanency might be with the biological parent whose rights were terminated. In fact, research suggests that many teenagers return to their biological families even after spending years in foster care.²⁹ In one study, a New York Family Court judge stated, "this is an irony that is brought home to me daily. After all of this elaborate mechanism of removal, adjudication, placement, I think a lot of the kids end up going back home. Even the kids whose goal is independent living."³⁰

In David's case, legislation that would allow him to reunify permanently and legally with his mother might prevent him from having to spend his next few years languishing in a group home or on the street. The foster care agency could provide support and services to David and his mother to ease his transition home. If his mother's parental rights were legally reinstated, she could enroll him in school, place him on her health insurance, and make medical decisions for him. Most importantly, David could have a caring adult in his life and know that he once again legally belonged to his mother for the rest of his life.

This Note proposes that in limited circumstances, it is in the best interest of the child to vacate a final order of termination and reinstate parental rights. It calls for states to adopt a model state statute based on the five state statutes currently in place that already allow for the reinstatement of parental rights.³¹

Part II provides general background information on termination of parental rights and briefly describes the procedural framework for overturning a final order of termination. Part III briefly examines trends toward recognizing the importance of maintaining a connection with a child's biological family. Part IV describes how the 46 states without a statute currently provide for the reunification of a child and parent whose rights have been terminated, through adoption, custody, and legal guardianship, and why these processes are an inadequate solution. Part V presents an analysis of the five state statutes that allow for the reinstatement of parental rights. Part VI discusses a proposal for a model state statute and Part VII provides a conclusion.

II. BACKGROUND INFORMATION ON TERMINATION OF PARENTAL RIGHTS

A. HOW DO PARENTS LOSE THEIR RIGHTS?

A child cannot be adopted unless his parents' rights have been terminated, either voluntarily or involuntarily.³² Every state has a statute that permits the court to involuntarily

terminate a parent's rights. Most states require that a court determine by clear and convincing evidence that the parent is unfit and that severing the parent-child relationship is in the best interest of the child.³³ While the grounds for involuntary termination vary from state to state, generally, the most common grounds include: severe or chronic abuse or neglect, abandonment, long-term mental illness, long-term alcohol or drug-induced incapacity of the parents, failure to maintain contact with the child, long-term incarceration and involuntary termination of the rights of the parent to another child in the household.³⁴ A parent is allowed to file a timely appeal of an order of termination, generally within 30 to 45 days of the final order.³⁵

B. OVERTURNING A FINAL ORDER

A termination of parental rights has been called the civil equivalent of the death penalty because "the degree and duration of parental fault or incapacity necessary to establish jurisdictional grounds for termination is greater than that required for other forms of judicial intervention."³⁶ After all the appeals are exhausted and the order becomes final it is very rarely if ever overturned. Once both parents' rights are terminated, children are legally free to be adopted. The policy behind having such a final order of termination is that the children and their adoptive families know that their adoption and new families are permanent.

If a termination of parental rights is so rarely overturned, how then can we consider legislation that would allow for its reversal? Courts have found that the finality of a court order does not always reconcile with the changing dynamics of child-parent relationships.³⁷

In light of the profound emotional effects custodial decisions can have on a child, a New York Court said it best when it held that, "the only absolute in law governing the custody of children is that there are no absolutes."³⁸ That same court also discounted the argument that *res judicata*³⁹ precludes allowing a judge discretion to set aside a final judgment when it is in the best interest of the child and when it is exercised "sparingly and only for the most compelling reasons."⁴⁰ In David's case, his mother has evolved from a homeless drug addict to a responsible, employed, drug-free woman who is eager to parent her son. Her evolution, coupled with the profound emotional effect it would have on David to remain in care, certainly qualifies as a compelling reason to consider setting aside the termination of her parental rights. However, regardless of how compelling Lisa's transformation has been, under existing law, the reinstatement of her rights and her legal reunification with David would be extremely difficult or even impossible.

III. FOSTER CARE YOUTH MAINTAINING CONTACT WITH BIOLOGICAL PARENTS IS PART OF A GROWING TREND IN CHILD WELFARE

There is a growing trend in child welfare toward recognizing the importance of facilitating and maintaining connections between children in foster care and their biological parents.⁴¹ In fact, several studies have shown that youth who have ongoing contact with their birth parents while in care have better outcomes than youth who do not maintain these connections.⁴² According to the Foster Youth Transitions to Adulthood Survey (FYTA), 52 % of former foster youth surveyed reported feeling very close or somewhat close to their biological mothers, while 46% reported that their biological families provided them with

emotional support.⁴³ This same study found that “the process of reconnecting with a family or significant other represents an important step toward emancipation and healthy functioning in the community, solidifying the adolescents’ identity, affirming family connections, clarifying personal history, and reintegrating past trauma.”⁴⁴ Regardless of a strained parent-child relationship, foster care youth are drawn to contact with their biological families and even limited family support has been shown to ease their depression.⁴⁵

Operating within this framework of reconceptualization of the importance of familial contact, foster care agencies and child welfare policies in general are shifting their focus away from severing all biological ties between a parent and foster child. Rather, where it is appropriate, they are focusing on positive ways to integrate biological parents into their child’s life.

Even when a child is freed for adoption and the parents’ rights are terminated, there are currently twenty-two states that have statutes that allow for open adoptions⁴⁶ and ongoing contact with the biological parent.⁴⁷ Many more allow it on an informal basis.⁴⁸ Even if the child is not adopted, the court can order contact and visitation with the biological parents.⁴⁹

Child welfare policies have also begun to reflect this trend toward maintaining contact with biological parents. Most recently, in October 2008, Congress passed sweeping legislation entitled the Fostering Connections to Success and Increasing Adoptions Act of 2008.⁵⁰ The Act provides federally funded “family connection grants” to states so that foster care agencies can develop more personalized long-term plans to youth aging out of foster care including placement and planning with their biological parents and extended families.⁵¹

On a more local level, New York City’s Administration for Children’s Services describes its recent trend toward maintaining family connections as a “culture shift.”⁵² In the past, children in New York City group homes and residential treatment facilities were punished by having family phone calls and visits taken away from them.⁵³ However, in 2003, the Agency enacted a family-based policy objective that was “aimed at ensuring that no youth ages out of foster care without a life-long connection that is as legally secure as possible to a caring adult functioning in a parental capacity.”⁵⁴ The policy went on to state that sometimes, the “best permanency resource for a young person who has been freed for adoption may be a member of the child’s birth family, including a parent from whom the child has been freed.”⁵⁵

IV. CURRENT LEGAL LANDSCAPE OF REUNIFICATION AFTER A TERMINATION OF PARENTAL RIGHTS

Currently, in the majority of states the only way to legally reunite a child and parent whose rights have been terminated is through adoption and guardianship.⁵⁶ Neither is an ideal process to achieve long-time permanency for children in foster care. It is very rare that a parent whose rights have been terminated will be allowed to adopt⁵⁷ his or her own child, and guardianship⁵⁸ typically only lasts until a child is eighteen or twenty-one.⁵⁹ Some parents and children chose to reunify informally which is not a good solution because then the parent has no legal rights to his or her child.

A. INFORMAL REUNIFICATION

Reunification on an informal basis does not create any rights. In David’s case, if he ran away from foster care when he was sixteen years old to live with his mother, she would not

be able to enroll him in school or make any medical decisions for him if he were injured in an accident. Studies on youth aging out of foster care indicate that a large percentage of former foster youth informally reunify by returning home to their biological parents regardless of whether parental rights have been terminated.⁶⁰ Research further indicates that youth “pursue these connections irrespective of whether they receive support while in care to maintain these connections.”⁶¹

Consequently, another drawback of informal, rather than statute-based parent child reunification is that the state is not required to ensure that the parent has addressed all the issues that led to the termination. If a teenager runs away from foster care for an occasional weekend visit or to stay long term, the state has little idea and no legal obligation to ensure that the child is returning to a safe and appropriate home.⁶² Youth who run away from foster care are in limbo, without a legal relationship to their parents and without support from the state. When they return home, the youth and their parents often lack the coping skills needed to deal with any conflicts that might arise between them as a result of such a prolonged separation.⁶³ Since a foster care agency will likely not want to plan with a parent whose rights have been terminated, no supportive services will be offered to facilitate the relationship and transition home. A state that adopted a statute allowing for the reinstatement of parental rights would be able to offer reunification services to a family for up to six months before the rights have been reinstated. And studies have shown that providing in-home services costs states much less than maintaining a child in foster care.⁶⁴

B. LEGAL STANDING TO PETITION FOR CUSTODY AND ADOPTION

There are no statutes that permit parents whose rights have been terminated to adopt their biological children. Rather, most of the state statutes and case law explicitly state that biological parents whose rights have been terminated have no legal standing to adopt their children or intervene as a third party in an adoption proceeding.⁶⁵ Courts in various states have indicated that the child’s best interests are not well served by the lack of legal options to reunite families whose rights have been terminated. They have either asked the legislature to pass a remedial statute or have found ways to serve children’s best interests without statutory authorization. For example, in New York, courts have dismissed custody petitions on behalf of a biological parent whose rights were terminated based on findings of res judicata and collateral estoppel,⁶⁶ “where they have previously been adjudicated as an unfit parent.”⁶⁷ Further, most parents whose rights have been terminated will be precluded from adopting by criminal background checks which are part of the adoption process in nearly every state.⁶⁸

The Florida Supreme Court held that a biological father “whose parental rights have been terminated lacks legal interest necessary to establish standing to intervene and contest for adoption of his or her child.”⁶⁹ Interestingly, the dissent in that same Florida case emphasized the capacity of a parent whose rights have been terminated to change:

A seemingly impossible economic or family situation can take an upturn; a physical or mental illness may go into remission or respond unexpectedly well to treatment, or a longstanding drug or alcohol problem can be overcome. In short a scenario that once looked hopeless to a parent or court can change dramatically.⁷⁰

Similar to David’s story is *In Re McBride*, an Ohio Case.⁷¹ In this case, a mother’s rights to her two children were terminated because she was a crack addict and spent time in prison

for stealing to support her habit.⁷² Seven years later, the mother, Ms. Fugate, found out that her daughter, Selina, had never been adopted. Rather, Selina had spent the last seven years in and out of foster homes and residential institutions. Ms. Fugate, who had addressed the issues that lead to her children's placement in foster care, filed a petition for custody of her daughter with the intention of adopting her. The juvenile court and the intermediate appellate court allowed Ms. Fugate to petition for custody but the Ohio Supreme Court reversed the decision holding that a "parent who has lost permanent custody of a child does not have standing as a nonparent to file a petition for custody of that child."⁷³

The opinion stated, "we recognize that Selina's situation is not ideal . . . In denying standing to Fugate . . . we are following the statute as written."⁷⁴ The opinion sends a signal to the Ohio legislature that the statute as written did not reflect the best interests of Selina and perhaps that it should be changed to recognize that sometimes parents whose rights have been terminated may be a child's best permanency resource.

Prior to the enactment of California's statute to reinstate parental rights, the California Court of Appeals similarly invited the California Legislature to consider allowing juvenile courts limited discretion to reinstate parental rights where the child would otherwise be left a legal orphan.⁷⁵ In the case of *In Re Jerred*, fourteen-year-old Jerred filed a petition to reinstate parental rights after Jerred's adoption by his stepfather fell through. Jerred still wanted a relationship with his stepfather, whom he asked the court to recognize as his presumed father. The termination order had already become final, however, so no legal basis for relief was possible.⁷⁶ In affirming the father's inability to resurrect a parent/child relationship, the Court of Appeals observed:

We join the trial court and county counsel in observing the harshness of the result we reach . . . In all likelihood, Jerred will be left a 'legal orphan'. . . 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 the completion of adoption."⁷⁷

Judges in other jurisdictions have granted standing for custody⁷⁸ to parents whose rights have been terminated even in the absence of a statute permitting them to do so.⁷⁹ A New York court allowed a mother who voluntarily surrendered her parental rights to file a petition for custody and then adoption of her son. The adoption was allowed after her son's adoptive parents agreed to surrender their parental rights and told him he was no longer allowed to live in their home.⁸⁰ The court emphasized that it is not "prohibited on the presentation of an appropriately significant change in circumstances, from revisiting the issue of custody."⁸¹ In rendering its judgment, the court gave weight to the relatively minor nature of the allegations, which were the child's failure to attend school while in his mother's care.⁸² The child's teenage status, and the fact that the mother was committed to adopting her son, thereby creating a permanent living situation for him, were also weighted carefully in the court's decision.⁸³

In *Matter of Rasheed A.*, the court found that in "unusual and compelling circumstances," a biological mother whose rights have been terminated may be granted standing to petition for custody or guardianship of her biological child.⁸⁴ In that case, the biological mother's rights had been involuntarily terminated because of her drug addiction.⁸⁵ The mother also had prior convictions for prostitution and drug possession and had been in and out of jail for seven years.⁸⁶ Her two younger children, Lisa and Rasheed, were born with a positive toxicology and placed in foster care shortly after they were born. Her rights to

them were terminated in 1998 and they were subsequently adopted by the same foster mother.⁸⁷

After a final stay in jail, Rasheed and Lisa's mother began a remarkable recovery process and participated in and successfully completed a drug rehabilitation program.⁸⁸ In 2000, Rasheed and Lisa's adoptive mother began allowing the children to visit their mother. While Lisa "flourished" in her adoptive home, Rasheed had always suffered from serious emotional and behavioral problems so severe that he had to be psychiatrically hospitalized.⁸⁹ Upon discharge, his adoptive mother allowed him to live with his biological mother because his behavior proved to be too challenging for her. After Rasheed had been living in her home for about a year, his mother filed a petition for guardianship with the ultimate intention of adopting her son.⁹⁰ After a court-ordered, full forensic evaluation of the entire family and several collateral sources, the court determined that it was in the best interests of Rasheed to be placed in the custody of his biological mother.⁹¹

In making its determination to grant legal standing to seek custody to Rasheed's mother, the court held that several burdens had been met.⁹² She demonstrated that the circumstances which led to the termination no longer existed.⁹³ She also proved that Rasheed would suffer "substantial harm" if she was not awarded custody.⁹⁴ In this case, the court-ordered forensic evaluator determined that because of his severe emotional and behavioral problems, Rasheed would likely have to spend the rest of his life in a psychiatric institution if he were not allowed to live with his mother.⁹⁵ In making a determination on standing, the court also considered the fact that Rasheed's mother wanted to adopt him and establish a permanent home for him.⁹⁶

This court made a very careful and balanced analysis of Rasheed's case. However, as the law stands now, in the majority of states there is no guarantee that all judges will give as much thought to each case or even consider such a petition. This judge was completely within his discretion to refuse to hear the petition and allow Rasheed to spend the rest of his life locked in a psychiatric facility.

Finally, there is the argument in support of statutes reinstating parental rights that it simply makes more sense to reinstate a parent's rights than to require that parent to adopt his or her own children.⁹⁷ Reinstatement is directly related to the termination and an acknowledgement that the conditions that led to it no longer exist. Adoption, on the other hand, is a legal procedure generally reserved for non-biological parents.

C. GUARDIANSHIP

Some states allow biological parents whose rights have been terminated to become their children's legal guardian in exceptional circumstances. However, guardianship is not a satisfactory solution to the problem of legal orphans because in the majority of states, guardianship lasts only until a child is eighteen.⁹⁸ This is true even for a subsidized guardianship, which was created specifically to help children exit the foster care system to live with a relative.⁹⁹ Some states allow the parties to petition the court for an extension of guardianship to the age of twenty-one.¹⁰⁰ However, after the age of twenty-one, the young adult and his parent/guardian are once again considered legal strangers.¹⁰¹ Unfortunately, many twenty-one-year-olds, even college graduates, still rely on support that is contingent on having a legal relationship to their parents. For example, sixteen states currently allow young adults to remain on their parents' health insurance well into their twenties and New Jersey allows it up until the thirtieth birthday.¹⁰²

Another right that is lost in the absence of a legal relationship is a parent's ability to make medical decisions for his or her children if they are incapacitated.¹⁰³ Finally, in the majority of states, a child loses his right to inherit from his biological parents and other family members upon a termination of parental rights.¹⁰⁴

D. EMOTIONAL IMPACT ON YOUTH IN FOSTER CARE WHO AGE OUT WITHOUT ANY LEGAL RELATIONSHIPS

Finally, there is a detrimental emotional impact on teens who age out of foster care knowing that no one is legally responsible for them.¹⁰⁵ Without the proper support and facilitation by the foster care agency, a youth aging out of foster care will begin his or her adult life with the sober realization that he or she "belongs to no one."¹⁰⁶ Youth aging out of care at eighteen or twenty-one years old describe the moment when they have to leave foster care as a "frightening event that brings overwhelming anxiety and profound loneliness."¹⁰⁷ One youth who ended up living briefly in a friend's car after aging out of foster care stated, "once you turn eighteen, it's like, bam, an explosion . . . People look at you different, like you're supposed to be a adult, but you're a kid."¹⁰⁸

V. ANALYSIS OF STATE STATUTES THAT PROVIDE FOR THE REINSTATEMENT OF PARENTAL RIGHTS

As evidenced by the aforementioned recent state and federal policies, establishing permanency for youth in foster care is clearly a serious and legitimate issue that needs to be addressed by state and federal legislation. Five states, California, Hawai'i, Nevada, Louisiana and Washington have already recognized the importance of creating a legal pathway to permanency by reinstating parental rights.¹⁰⁹ In addition to these existing statutes, New York currently has a bill before the legislature calling for a similar statute.¹¹⁰

While each of the states takes a different approach, they address the same basic issues: which parties can petition the court to have those rights reinstated, the age the child has to be in order to be covered by the petition, and the length of time since the termination that the petition can be filed. All of the states require that the court must find that is in the best interest of the child to reinstate parental rights.

A. THRESHOLD HEARING REQUIREMENT

Hawai'i and Louisiana are the only states that do not require a threshold or initial hearing regarding whether the petition may go forward prior to a hearing on the merits.¹¹¹ Hawai'i's statute states that if the child has not been placed in an adoptive home within one year of the termination, upon any of the party's¹¹² motion, the court "shall review" its judgment of termination and determine whether or not it should be continued.¹¹³ Similarly, in Louisiana, counsel for the child or the Department of Social Services may make a motion to reinstate a parent's rights if the child is over fifteen years old.¹¹⁴ Washington's statute calls for a threshold hearing before a hearing on the merits where the court must find by a "preponderance of the evidence that the best interests of the child may be served by reinstatement of parent rights."¹¹⁵

In Washington, for both the threshold hearing and the hearing on the merits, prior notice must be given to the following parties: the Department of Human Services, the child's

attorney, the child, the parents whose rights have been terminated, the child's current foster parents or caregiver, and any parent whose rights have not been terminated.¹¹⁶ California will grant a hearing on the merits of the petition "if it appears that the best interests of the child may be promoted by reinstatement of parental rights."¹¹⁷ If the hearing is granted, notice must be given to the social worker, probation officer, if applicable, child's attorney, and the child's parents whose rights were terminated.¹¹⁸

Before it will hear the merits of the petition, Nevada requires written consent from the parent whose rights are to be reinstated.¹¹⁹ In Nevada, notice must also be given to the child's legal custodian and legal guardian, the person or governmental entity that petitioned for the termination of parental rights, the child's attorney or, "if none, the child."¹²⁰ All of the preceding parties must be allowed to present testimony and evidence during the hearing.¹²¹ Interestingly, in Louisiana, although the parent and the child have the right to be heard, they are not considered parties to the proceeding and the hearing can be conducted without either of them present. However, the court may not grant the relief requested in the petition without the consent of the parent.¹²²

B. WHO CAN PETITION AND WHEN?

In California and Washington, only the child can petition the court.¹²³ The California law limits the right to petition to the child in order to "prevent a parent from collaterally attacking a termination order and preventing or stalling an adoption that is in the child's best interest."¹²⁴ The California statute calls for at least three years between the termination of parental rights and the time when the child can petition the court for reinstatement. If the child can prove that he or she is no longer likely to be adopted, the three-year period may be waived.¹²⁵ The statute does not define what the child must show in order to prove that he is unlikely to be adopted, but typical factors include: children who have severe emotional, physical, and medical needs or teenagers, as well as children who are part of a large sibling group.¹²⁶ A child of any age can petition the court in California.¹²⁷

Similar to California, Washington only allows the child to petition the court for the reinstatement if the child has not been adopted within three years of the termination.¹²⁸ However, unlike the California statute, the child must be at least twelve years old to petition the court. If the child is under twelve years old, the court or the child, must show "good cause" as to why his or her parent's rights should be reinstated.¹²⁹

While all of the statutes require that the court find that is in the child's best interest to have his or her parent's rights reinstated, the Washington statute lists several specific factors for the court to consider.¹³⁰ These include: the age and maturity of the child; the ability of the child to express his or her preference; whether the parent has remedied the deficits that led to the termination; whether the reinstatement will present a risk to the child's health, welfare, or safety; willingness of the parents and children to have the parental rights restored; whether the parent is "fit" and has remedied his or her deficits as provided in the record of the prior termination proceedings; and any other material changes in circumstances.¹³¹

Washington's statute also allows for a six-month conditional grant of the petition where the child is placed in the parent's custody. During this six-month period, the Department of Human Services provides the family with services to facilitate reunification and ease the child's transition home.¹³² If all goes well after six months, the reinstatement order remains in effect and the dependency is dismissed.¹³³ Six months later, the court holds a hearing and

if the reunification has been successful, a final order of reinstatement is issued and the dependency case is dismissed.¹³⁴ In essence, the court supervises the family for one year before the reinstatement becomes final.¹³⁵

Hawai'i does not have an age requirement. However the child is not permitted to petition the court for reinstatement.¹³⁶ Rather, one year after the order of termination, only the parent or Department of Human Services is allowed to petition the court if the child has not yet been adopted or placed in a prospective adoptive home.¹³⁷ Hawai'i's statute does not define who must be present at the hearing or who must receive notice of the petition.¹³⁸

Nevada's statute permits the child, legal guardian, or custodian to petition the court.¹³⁹ The child must be fourteen years old in order to petition the court, but the court will allow a child younger than 14 to petition the court if the court specifies why it is in the child's best interest to do so.¹⁴⁰ Like California and Hawai'i, Nevada does not provide for any trial period where the parents' rights are temporarily reinstated. As soon as the court rules on the petition, it becomes final.

C. DEBATE OVER WHO SHOULD BE ALLOWED TO PETITION THE COURT

It may seem incongruous that three states do not permit the parents whose rights are being restored to petition the court for their reinstatement. However, the states that do not allow parents to petition the court still require parental consent at an initial hearing in person, or in writing.¹⁴¹

Legislative history from California, along with the consensus of some practitioners in the field, indicates a fear that parents might abuse the right to petition the court and disrupt the life of a child who does not want to reunify with a parent.¹⁴² There were also concerns in California among prospective adoptive parents that an overly broad statute and the ability of a biological parent to re-enter the picture would chill or destabilize prospective adoptions.¹⁴³ As a result, the California statute specifically states that the *child* is the only one with the right to petition the court; as the legislative history notes, this approach was crafted to prevent a biological parent from halting or "stalling an adoption that is in the child's best interest."¹⁴⁴ This statute is reflective of the belief among some child welfare practitioners that the petition should only be on the initiative of the child so that he or she is the only party empowered to make the decision about reunification with a parent.¹⁴⁵ In the three states that allow the child to petition, children who do not already have an attorney are assigned one on the filing of the petition.¹⁴⁶

Although this may work well in a jurisdiction where a child is automatically assigned a lawyer, there are jurisdictions where a child is not guaranteed legal representation.¹⁴⁷ There may also be a case in which the child's lawyer and the Department of Human Services disagree with the child's petition, or the child is too young to know that his parent is rehabilitated. In these instances, it may be placing too much of a burden on children by permitting them to be the only party that can petition the court.

In Washington, a state where only the child is allowed to petition the court, the first parties to use the law experienced some difficulties.¹⁴⁸ A child who had fled from foster care petitioned the court for his reinstatement. Because a "pick up" order had been issued for him, he was afraid to go near the court in order to file the petition.¹⁴⁹ As a result, his mother, whose rights were to be reinstated, ended up filling out and filing much of the initial paperwork for him before he was assigned a lawyer.¹⁵⁰ This child's mother had been instrumental in initiating Washington's reinstatement legislation, so he was well informed of his rights.¹⁵¹ However, there have also been reports in Washington of children not being

informed of the law or not being told by their case workers that the law applies to them.¹⁵² It is clear that, in addition to legislative action, more education and awareness promotion regarding these statutes and the new rights they create is required.

VI. PROPOSAL FOR A MODEL STATE STATUTE

States should adopt a model state statute that would allow for the reinstatement of parental rights after a termination. The statute should be based on the statutes in California, Hawai'i, Nevada, Washington, and Louisiana as well as a bill that is currently before the New York State legislature.¹⁵³

Ideally, all parties, including the original petitioner, the foster care agency, the Department of Social Services or any other child-placing organization, the child, and the parent would consent to the reinstatement prior to the filing of the petition. In fact, the bill currently before the New York state legislature will only permit the filing of the petition if all parties consent. If the agency will not consent, the bill requires an allegation that the consent was held without good cause.¹⁵⁴

A child, the Department of social services, and any child-placing organization may petition the court to reinstate the previously terminated parental rights of his or her parent under the following circumstances: the child was previously found to be a dependent child; the child's parents' rights were terminated; the child has not been adopted within two years of a final order of termination; and the child is not currently in the process of being adopted.

Since there is a stigma attached to a parent whose rights have been terminated, it is foreseeable that an agency may not be willing to work with a parent even after she has rehabilitated herself. Therefore, it makes sense that the child and the child placing-organization on consent of the child should always be allowed to petition the court. A child seeking to petition shall be provided counsel at no cost to the child. If the child is too young to petition the court or to express a preference, a parent should be allowed to petition the court for reinstatement on consent of the child's attorney, if applicable, or on consent of the Department of Social Services and any child-placing organization. If one of the agencies is found to be unreasonably withholding its consent, the other parties may still file the petition. The parent for whom restoration is sought must be informed of the legal obligations, rights, and consequences of the restoration of parental rights. If the court finds by a preponderance of the evidence that the parent has intentionally acted to prevent the child from being adopted, after parental rights were terminated or that the parent intentionally acted to disrupt the child's adoption, the court shall dismiss the petition with prejudice.

If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice to all parties. The ASFA standard for termination of parental rights and that adopted by the majority of the states is clear and convincing evidence.¹⁵⁵ Accordingly, the standard for vacating the termination and reinstating parental rights should be the same. The court must find by clear and convincing evidence that reinstatement of parental rights is in the child's best interest.

In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following: whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order; the nature and severity of the circumstances that led to the termination order; whether the reinstatement of parental rights

will present a risk to the child's health, welfare, or safety; the willingness of the parent and child to resume contact with each other and to have their rights restored; and any other material changes in circumstances, if any, that may have occurred, which warrant the granting of the petition.

Parents with a long history of severe, repeated physical abuse or sexual abuse resulting in serious bodily harm or criminal prosecution should not be allowed to petition the court or have their parental rights reinstated. The potential trauma to the child resulting from such serious abuse and the possibility for re-offense is too grave. Consequently, the nature and severity of the circumstances that led to the termination will be a factor the court will consider in determining whether it is in the best interests of the child to reinstate parental rights.

At the court's discretion, the court may conditionally grant the petition for six months and enter a temporary order of reinstatement. During this period, the child shall be placed in the custody of the parent. The child welfare agency shall develop a reunification plan for the child and shall provide transitional and supportive services to the family as appropriate. If the child has been successfully placed with the parent for six months, the court shall enter a final order of reinstatement of parental rights, which shall restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The granting of the petition automatically vacates the validity of the original termination order.

There should also be a waiting period of at least two years between the final order of termination of parental rights and the petition for reinstatement. This will give parents ample time to establish a proven track record of rehabilitation, to get every aspect of their lives in order, and, if possible, to begin reconnecting with their child in foster care. In addition, the child must not have been adopted nor be in the process of being adopted, because then the child will already have achieved permanency and a legal familial relationship and the state's as well as the child's best interest has been achieved. While there are instances where adoptions fail, those cases are rare and should be examined on a very individual basis in order to "preserve the finality of an adoption . . . and protect the adoptive relationship from uncertainty and disruption."¹⁵⁶

Finally, there should not be an age requirement for a child who wants to petition the court. Even though older children and teenagers are less likely to be adopted, an eight year old who has not been adopted from foster care in two years should not have to spend the next several years in foster care waiting to petition the court when he has a parent who is able and willing to be reunited with him on a permanent basis.

States that are committed to achieving permanency for their youth in foster care are encouraged to adopt a model state statute that would vacate a termination order and allow for reinstatement of parental rights.

VII. CONCLUSION

Children and teenagers in foster care comprise some of our nation's most vulnerable citizens. Many suffer unimaginable horrors at the hands of the people who should be trusted to care for them the most. Often they are re-traumatized by the foster care system bouncing from placement to placement without ever finding a home. Some children can never be reunified with their family. However, sometimes the circumstances surrounding the termination were not so grave as to prohibit the possibility of ever allowing parents to

safely care for a child again. And sometimes a termination of parental rights is the final push parents need to begin getting their lives back on track. In these limited circumstances, when a parent has rehabilitated herself and her child has not found a permanent home through the foster care system, we must consider the biological parent whose rights have been terminated as a permanency resource and restore the parent/child connection. If “permanent, nurturing, family connections are the foundation of all child welfare services,”¹⁵⁷ we need to put in place a legal procedure that will facilitate this goal and create secure and healthy relationships for these children.

NOTES

* I would like to dedicate this note to my husband, Lamar, for his unwavering support, love, and encouragement throughout the note writing process and three years of law school. Thank you for always keeping me grounded. I would also like to extend my sincere appreciation to Professor Andrew Schepard, Miriam Krinsky, Barry Chaffkin, Elaine Wolcott-Ehrhardt, Kathleen DeCataldo, Michele Cortese, and Nanette Schrandt for their invaluable advice, generous feedback, and guidance, during the writing process. Special thanks to Giuseppe Aguanno for his constant support and encouragement. I would also like to thank Zandra D’ambrosio, Jenna Suppon, Christina Gaudio, and Bekki Moulton. Finally, I would like to thank my parents for their help in editing this note and both my parents and grandparents for their unconditional love, support, and guidance throughout my law school career and my entire life.

1. Josh Farley, *Boys Removed From Home Petition Court to Leave Foster Care*, KITSAP SUN, August 6, 2007, <http://www.kitsapsun.com/news/2007/aug/06/boys-removed-from-home-petition-court-to-leave/>.

2. Madelyn Freundlich, *Time Running Out: Teens in Foster Care*, CHILDREN’S RIGHTS, LEGAL AID SOCIETY JUVENILE RIGHTS DECISION & LAWYERS FOR CHILDREN, Nov. 2003, at 67.

3. “Aging out” is the term used to describe teens who reach the age, generally eighteen or twenty one, when they are no longer eligible to remain in foster care. Some refer to this as “emancipation” from foster care.

4. There are only five states that have statutes allowing for the reinstatement of parental rights; California: CAL.WELF. & INST. CODE § 366.26(i)(2) (2007); Hawai’i: HAW. REV. STAT. § 571–63 (2004); Louisiana: LA. CHILD. CODE ANN. art. 1051 (2007); Nevada: NEV. REV. STAT. ANN. §§ 128.170–180 (2007); Washington: WASH. REV. CODE §13.34.215 (2007).

5. U.S. DEP’T OF HEALTH & HUMAN SERV’S. ADMIN. FOR CHILDREN & FAMILIES, THE AFCARS REPORT: PRELIMINARY FY 2007 ESTIMATES AS OF JUNE 2006 (2006), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm.

6. Mark E. Courtney et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Foster Care*, 70 CHILD WELFARE 685 (2001).

7. Miriam A. Krinsky, *Adoption Process Can Render Kids Parentless*, THE DAILY JOURNAL, Jan. 12, 2005, available at http://www.clcla.org/Images/pdfs/pdfs_whatsnew_columns/Adoption_Parentless.pdf; Alice Bussier, *Permanence for Older Foster Youth*, 44 FAM. CT. REV. 231, 236 (2006).

8. *Krinsky*, *supra* note 7.

9. U.S. DEP’T OF HEALTH & HUMAN SERV’S. ADMIN. FOR CHILDREN & FAMILIES, THE AFCARS REPORT: TRENDS IN FOSTER CARE AND ADOPTION—FY 2002-FY 2007, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm.

10. Letter from Miriam Krinsky, former Executive Director, Children’s Law Center of Los Angeles, to Arnold Schwarzenegger, Governor of California (Sep. 14, 2005).

11. *Id.*

12. *Id.*

13. RICHARD WERTHEIMER, YOUTH WHO “AGE OUT” OF FOSTER CARE: TROUBLED LIVES, TROUBLING PROSPECTS, CHILD TRENDS RESEARCH BRIEF, (2002), <http://www.childtrends.org/Files/FosterCareRB.pdf>; see also Freundlich, *supra* note 2 at 67.

14. Wertheimer, *supra* note 13.

15. Theo Liebmann, *What’s Missing From Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards*, 28 HAMLINE J. PUB. L. & POL’Y 141 (2006).

16. Zandra D’Ambrosio, *Advocating for Comprehensive Assessments in Domestic Violence Cases*, 46 FAM. CT. REV. 654, 660 (2008).

17. *Id.*
18. Wertheimer, *supra* note 13.
19. See generally Leslie Kaufman & Richard L. Jones, *Trenton Finds Abuse in Foster Care*, N.Y.TIMES, Apr. 16, 2003.
20. Wertheimer, *supra* note 13.
21. Freundlich, *supra* note 2; Wertheimer, *supra* note 13; J. K. Jensen, *Fostering Interdependence: A Family Centered Approach to Help Youth Aging out of Foster Care*, 3 WHITTIER J. OF CHILD AND FAMILY ADVOCACY 329 (2003–2004).
22. Freundlich, *supra* note 2.
23. Diane Riggs, *Permanence Can Mean Going Home*, 2006 ADOPTALK1.
24. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997); Foster Care Independence Act of 1999, 42 U.S.C. § 677 (2000). Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351 (2008).
25. Adoption and Safe Families Act, Pub. L. No. 105–89; Child Welfare Information Gateway, *Grounds for Involuntary Termination of Parental Rights: Summary of State Laws*, (2007) available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundterminall.pdf.
26. Adoption and Safe Families Act, *supra* note 25.
27. Child Welfare Information Gateway, *supra* note 25.
28. See statutes, *supra* note 4.
29. See generally R.P. Barth, *Emancipation Services for Adolescents in Foster Care*, SOCIAL WORK, May-June, 165 (1986); R. P. Barth, *On their Own: The Experiences of Youth After Foster Care*, 7 CHILD AND ADOLESCENT SOCIAL WORK, 419 (1990); A.P. Inglehart, *Adolescents in Foster Care: Predicting Readiness for Independent Living* 16 CHILDREN AND YOUTH SERVICES REVIEW, 159 (1994); Mark E. Courtney, et al., *Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months After Leaving Out-of-Home Care* (1998), Madison: University of Wisconsin-Madison; Kristi Charles & Jennifer Nelson, *Permanency Planning: Creating Life Long Connections* 10 (Natl. Resource Ctr. For Youth Dev.), (2000) available at <http://www.nrcys.ou.edu>.
30. Freundlich, *supra* note 2.
31. See statutes *supra* note 4.
32. Child Welfare Information Gateway, *supra* note 25. (The majority of states have statutes permitting parents to voluntarily surrender their parental rights if it is in the child's best interests. This is generally done when a parent wishes to place her child up for adoption, often with someone who has already been identified as a potential adoptive parent. Some statutes allow for parents who have voluntarily surrendered their parental rights to revoke their voluntary surrender or petition for custody if the child is not adopted within a certain amount of time.)
33. See, e.g., ALA. CODE § 12-15-319 (2009); ALASKA STAT. §§ 47.10.011, 47.10.080, 47.10.088 (2008), ARIZ. REV. STAT. § 8-533 (2009); CAL. WELF. & INST. CODE §§ 361.5, 366.26 (2009); FLA. STAT. ANN. § 39.806 (2009); HAW. REV. STAT. §571-61-63 (2009); IDAHO CODE ANN.§ 16–2005 (2009); S. D. CODIFIED LAWS §§ 26-8A-26.1, 26-8A-27 (2009); WASH. REV. CODE §§ 13.34.132, 13.34.180. For a listing of additional statutes regarding termination of parental rights, see also Child Welfare Information Gateway, *supra* note 25.
34. Child Welfare Information Gateway, *supra* note 25.
35. *Id.*
36. *Drury v. Lang*, 105 Nev. 430 (1989).
37. *Matter of Theresa O. v. Arthur P.*, 11 Misc. 3d 736 (Fam. Ct. Ulster Co., 2006) quoting *Friederwitzer v. Friederwitzer*, 55 N.Y.2d 90 (1982).
38. *Matter of Theresa O.* *supra* note 37.
39. Res Judicata is “an issue that has been definitively settled by judicial decision.” BLACK’S LAW DICTIONARY 618 (3rd ed. 2006).
40. *Matter of Frederick S.*, 178 Misc. 2d 152 (Fam. Ct., Kings Co., 1998).
41. Jensen, *supra* note 21.
42. Courtney et al., *supra* note 6.
43. *Id.*
44. M.J. Landsman & K. Malone, *Achieving permanency for teens: Lessons Learned From a Demonstration Project* Iowa City: University of Iowa School of Social Work, National Resource Center for Family Centered Practice (1999).
45. Courtney, *supra* note 6.
46. An open adoption is defined as “a form of adoption in which the birth family and the adopted child enjoy an ongoing, in-person relationship.” <http://www.openadoption.org/index.html>.

47. Child Welfare Information Gateway: Post adoption Contact Agreements Between Birth and Adoptive Families: Summary of State Law (2005) available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/cooperativell.pdf.

48. *Id.*

49. *Id.*

50. Fostering Connections, *supra* note 24.

51. *Id.*

52. Memorandum from the Administration for Children's Services to Executive Directors, Contract Foster Care Agencies & ACS Staff (June 12, 2003) available at http://www.nyc.gov/html/acs/downloads/pdf/asfa_5.pdf.

53. Freundlich, *supra* note 2.

54. Memorandum from the Administration for Children's Services, *supra* note 52.

55. *Id.*

56. See e.g., CAL. WEL. & INST. CODE § 366.26 (2009); HAW. REV. STAT. §§ 560:1–401, 5–201, 5–210 (2009); N.Y. FAM. CT. ACT § 661 (2008); WASH. REV. CODE § 11.88.120 (2009); see also In re M.O., 2007 WL 2827373 (holding that once a parent's rights are involuntarily terminated “[t]he State has suggested that the only proper method available would be a petition for adoption . . . since a party whose parental rights have been terminated is a legal stranger to the child.”).

57. “Adoption is a legal process that creates a new, permanent parent-child relationship where one didn't exist before. The adoption proceedings take place in court before a Judge. Adoption bestows on the adoptive parent(s) all the rights and responsibilities of a legal parent, and gives the child being adopted all the social, emotional, and legal rights and responsibilities of a family member.” <http://adopting.adoption.com/child/what-is-adoption.html>.

58. “The most significant distinction between guardianship and adoption is that guardianship does not sever the biological parents' rights and responsibilities and the guardian does not become the parent in the eyes of the law. Guardianship of a child means that a caregiver is responsible for the care and custody of the child. This “guardianship” designation allows the caregiver to access services on behalf of the child that without such a designation might prove impossible. Unlike with adoption, a parent can go back to court and ask for the guardianship to be ended and the care and custody of the child returned to the parent.” <http://adopting.adoption.com/child/guardianship-2.html>.

59. Child Welfare Information Gateway, *Placement of Children with Relatives: Summary of State Laws* (2008), http://www.childwelfare.gov/systemwide/laws_policies/statutes/placementall.pdf.

60. Charles & Nelson, *supra* note 29, at 11.

61. *Id.*

62. I emphasize teenagers here because they are often the ones who have the capacity and are given the freedom of traveling by themselves to visit their biological families.

63. Freundlich, *supra* note 2.

64. Sally Wood et al., *In-Home Treatment of Abusive Families: Cost and Placement at One Year*, 25 PSYCHOTHERAPY: THEORY, RESEARCH, PRACTICE AND TRAINING 409 (1988); see also, The Center for Family Representation, Inc., *The Cost of Community Advocacy Teams v. The Cost of Foster Care*, http://www.cfnr.org/new_legal.asp#cat6.

65. ALA. CODE §26-10A-28 (2009); FLA. STAT. ANN. §63.0425 (2009); N.J. ANN. STAT. §§ 9:3-48 & 9:3-54.2; see also Child Welfare Information Gateway, *supra* note 59 (for a listing of additional statutes regarding termination of parental rights).

66. Collateral estoppel is “[t]he binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based.” BLACKS LAW DICTIONARY 112 (3rd ed. 2006).

67. *Matter of Tiffany A. v. Margaret H.*, 71 Misc. 2d 786 (Fam. Ct. Kings Co. 1996).

68. Riggs *supra* note 23.

69. *Stefanos v. Rivera-Berrios*, 673 So.2d 12 (Fla. 1996).

70. *Id.*

71. In re McBride, 850 N.E.2d 43 (Ohio 2006).

72. Sharon Coolidge, *Mom wants to adopt daughter she lost: Ex-addicts effort may be first after parental rights taken*, THE ENQUIRER, Oct. 28, 2004, available at http://www.enquirer.com/editions/2004/10/28/loc_fosterkid.html.

73. In re McBride, *supra* note 71.

74. *Id.*

75. See In re Jerred H., 121 Cal.App.4th 793 (2004).

76. *Id.*

77. *Id.* at 799.

78. “Custody refers to who has legal decision-making authority in the life of a child,” <http://www.womansdivorce.com/what-is-custody.html>.

79. *See generally*, *Matter of Theresa O. v. Arthur P.*, 11 Misc. 3d 736 (Fam. Ct. Ulster Co., 2006); *Matter of Rasheed A.*, 238 N.Y.L.J. 24 (2007).

80. *Matter of Theresa O. v. Arthur P.*, *supra* note 79.

81. *Matter of Rasheed A.*, *supra* note 79 (quoting *Matter of Theresa O.*, 11 Misc. 3d 736 (2006)).

82. *Matter of Theresa O.*, *supra* note 79.

83. *Id.*

84. *Matter of Rasheed A.*, *supra* note 79.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. E-mail from Miriam Krinsky, Esq., former Executive Director of Children’s Law Center of Los Angeles, Los Angeles, CA to Randi O’Donnell (Oct. 19, 2008, 10:56 EST) (on file with the author); Telephone Interview with Katherine R. DeCataldo, Esq., Executive Director New York State Permanent Judicial Commission on Justice for Children (Sept. 26, 2008); Telephone Conversation with Barry Chaffkin, LCSW, CEO and co-founder of CT WOCAT (Changing The World One Child At a Time) (Oct. 22, 2008).

98. Statutes, *supra* 56.

99. *See* Children’s Defense Fund, *States’ Subsidized Guardianship Laws at a Glance*, (2004), <http://www.childrensdefense.org/child-research-data-publications/data/state-subsidized-guardianship-laws.pdf>.

100. *See e.g.*, N.Y. Fam. Ct. § 661 *supra* note 56.

101. *See generally*, statutes, *supra* note 4.

102. Daniel C. Vock, *States Let Adult Kids Stay on Parents’ Insurance*, STATLINE.ORG (Aug. 15, 2007), <http://pewresearch.org/pubs/568/states-let-adult-kids-stay-on-parents-insurance>.

103. Riggs *supra* note 23.

104. *See e.g.*, ARIZ. REV. STAT. ANN. § 8-539 (2009); COLO. REV. STAT. § 19-3-608 (2009); CONN. GEN. STAT. § 45a-707(8) (2009); *see generally* Richard L. Brown, *Disinheriting the Legal Orphan: Inheritance Rights of Children after Termination of Parental Rights*, 70 MO.L. REV. 125, 150 (2005).

105. Gloria Hochman et al., *Foster Care: Voices from the Inside*, THE PEW COMMISSION ON CHILDREN IN FOSTER CARE (2004).

106. *Id.*

107. Nell, Bernstein, *Without a Nest*, (March 27, 2002), available at <http://www.salon.com/mwt/feature/2002/03/27/emancipate/index.html>.

108. *Id.*

109. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007); HAW. REV. STAT. § 571-63 (2004); LA. CHILD. CODE art. 1051 (2008); NEV. REV. STAT. ANN. §§ 128.170-180 (2007); WASH. REV. CODE § 13.34.215 (2007).

110. S. 3868-A 232nd Sess. (N.Y. 2009)/A. 8524 232nd Sess. (N.Y. 2009).

111. HAW. REV. STAT. § 571-63 (2004); LA. CHILD. CODE art. 1051 (2008).

112. The parties referred to in Hawai’i’s statute are “the parents, the Department of Human Services, or any child-placing organization approved by the department or any other proper person.” HAW. REV. STAT. § 571-63 (2004).

113. HAW. REV. STAT. § 571-63 (2004).

114. LA. CHILD. CODE art. 1051 (2008).

115. WASH. REV. CODE §13.34.215 (2007).

116. *Id.*

117. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007).

118. *Id.*

119. NEV. REV. STAT. ANN. §§ 128.170-180 (2007).
 120. *Id.*
 121. NEV. REV. STAT. ANN. §§ 128.170-180 (2007).
 122. LA. CHILD. CODE art. 1051 (2008).
 123. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007); WASH. REV. CODE §13.34.215 (2007).
 124. A.B. 519, S. Comm. on the Judiciary, Reg. Sess. (Ca. 2005).
 125. *Id.*
 126. Krinsky, *supra* note 97.
 127. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007).
 128. WASH. REV. CODE §13.34.215 (2007).
 129. *Id.*
 130. *Id.*
 131. *Id.*
 132. *Id.*
 133. *Id.*
 134. *Id.*
 135. *Id.*
 136. HAW. REV. STAT. § 571-63 (2004).
 137. *Id.*
 138. *Id.*
 139. NEV. REV. STAT. ANN. §§ 128.170-180 (2007).
 140. *Id.*
 141. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007); NEV. REV. STAT. ANN. §§ 128.170-180 (2007); WASH. REV. CODE §13.34.215 (2007).
 142. A. 519, Sess. 2005–2006 (C.A. 2005); Krinsky, *supra* note 97.
 143. Krinsky, *supra* note 97.
 144. A. 519 *supra* note 142.
 145. Krinsky, *supra* note 97.
 146. CAL.WELF. & INST. CODE § 366.26(i)(2) (2007); NEV. REV. STAT. ANN. §§ 128.170-180 (2007); WASH. REV. CODE §13.34.215 (2007).
 147. First Star, *A Child's Right to Counsel* (2007), <http://www.firststar.org/policy/rtc.asp>
 148. E-mail correspondence with Elaine Wolcott-Ehrhardt, President of Washington Families United, Olympia, WA, (Oct. 20, 2008, 9:48 EST) (on file with the author); *see also* Farley, *supra* note 1; Josh Farley, *Parents, Sons Must Prove They Want to Be Reunited*, KITSAP SUN, Sept. 17, 2007, <http://www.kitsapsun.com/news/2007/sep/17/parents-sons-must-prove-they-want-to-be-reunited/>.
 149. Wolcott-Ehrhardt, *supra* note 148; A pick up order is when a warrant is issued by the clerk directing law enforcement to pick up and take the child to detention.
 150. Wolcott-Erhardt, *supra* note 148
 151. *Id.*
 152. *Id.*
 153. CAL. WELF. INST. § 366.26 (i) (2) (2007); HAW. REV. STAT. § 571-63 (2004); NEV. REV. STAT. §§ 128.170-180 (2007); WASH. REV. STAT. §13.34.215 (2007); S. 3868-A 232nd Sess. (N.Y. 2009)/A. 8524 232nd Sess. (N.Y. 2009).
 154. S.3868-A/A.8524 *supra* note 153.
 155. ASFA, *supra* note 24.
 156. Matter of Rasheed A., *supra* note 79.
 157. Memorandum from the Administration for Children's Services *supra* note 52.

Randi J. O'Donnell is the Managing Editor of the Family Court Review. She graduated from the University of Pennsylvania and also has a Master's Degree in Social Work from the Columbia University School of Social Work. Prior to entering law school, Randi worked with children and teenagers in foster care as a social worker at the Juvenile Rights Practice of the Legal Aid Society in New York City. At Hofstra, Randi is a Child and Family Advocacy Fellow. After her first year of law school, she interned at the Center for Family Representation in Manhattan. During her second summer, she interned at the New York County District Attorney's Office.