
From Foster Drift to Legal Orphans: The Need for Statutes That Reinstate Terminated Parental Rights

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I spent my childhood in a series of about 30 placements in foster homes, kinship care, shelter care, correctional institutions, treatment facilities, and group homes. Over the years I was in the system, there were hundreds of people who had some responsibility for me, yet I aged out without finding a “forever family.” I entered adulthood knowing that, for the rest of my life, there would be no parents to whom I would ever be ‘precious.’

Misty Stenslie¹

When thinking about countries with a large orphan population, it’s not uncommon to reflect upon those that have been ravaged by civil wars, natural disasters, or public health tragedies.² In the United States, however, more than 25,000 children in Fiscal Year (FY) 2011³ alone became “legal orphans” by virtue of a child welfare system that

terminates the rights of their parents during their minority and then sets them adrift at the age of majority without connection to any other family.⁴ A “legal orphan” is a child or young adult with no formal tie to any parent. During the child’s minority, the state assumes the official role as guardian. Generally, at age 18 (or soon after), the state abdicates legal authority and the young adult, if not previously adopted, is left without any legal tie to any family. Despite the emphasis that federal and state law places on achieving permanency (such as reunification with biological parents, adoption, guardianship, or “another planned permanent living arrangement”⁵), tens of thousands of teens in foster care exit state custody at the age of majority without any permanent family.⁶

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BACKGROUND—THE ADOPTION AND SAFE FAMILIES ACT

The federal Adoption and Safe Families Act of 1997 (ASFA) was enacted to require states to achieve timely permanency for children who are placed in foster care after being removed from their homes due to allegations of some form of child abuse or neglect. ASFA requires local child protective agencies and juvenile courts to implement expedited proceedings for children in foster care.⁷ Intended to address so-called "foster care drift"—children drifting through the foster care system for years without a permanent home—ASFA requires state welfare agencies to seek judicial termination of parental rights for any child who remains in foster care for 15 of the prior 22 months.⁹ A judicial order terminating parental rights severs the legal relationship between the child and her biological parents and sets the stage for the child to achieve another legal permanency option such as adoption.¹⁰ As a practical matter, however, ASFA frees children for an alternative permanent placement at a faster rate than child welfare agencies can place them for adoption.¹¹ As a result, many of these youth are reaching adulthood—and exiting foster care—without a permanent or legal connection to any family. These children then become society's legal orphans—severed from their biological families and never legally made part of another family.¹²

As a cohort, children who spend some portion of their childhood in foster care and exit that system without a permanent family "fare poorly on virtually every predictor of future successful adult transition including education, early parenthood, emotional problems, involvement with the criminal justice system, poverty, and homelessness."¹³ At the same time, however, some of the biological parents whose rights were judicially terminated eventually manage to change their lives (albeit not within ASFA's strict timelines) and achieve parental "fitness." As a result, children without any other family connections remain estranged from their now fit, but previously terminated, biological parents without any prospect of formal reunification. Recently, some children's attorneys have attempted to craft alternative legal solutions to this dilemma, including arranging a guardianship between the child and her terminated parents at some point before the child reaches the age of majority.¹⁴ These creative alternatives, however, fall short of the legal rights that were once terminated.¹⁵

BACKGROUND—REUNIFICATION STATUTES

Recognizing that familial, genetic, and emotional bonds are not as easily or quickly severed as legal ones, and that some biological parents can reform themselves even long after their parental rights are terminated, an increasing number of states are enacting posttermination reunification statutes that allow biological parents' rights to be reinstated.¹⁶ Such statutes provide an additional option to achieve a "forever family" for legal orphans that currently fall through the critical gaps in the child welfare system.¹⁷ At least in some cases, the best interests of these children requires the state to explore the possibility that a formerly unfit parent may eventually provide a child's best chance for a permanent family.¹⁸

Posttermination reunification is not without risk. Parental rights are not terminated frivolously; the state must demonstrate parental unfitness or the parent must willingly stipulate to the termination. The abuse or neglect of a child removed from parental custody and later resulting in termination of parental rights is generally severe, chronic, and deliberate.¹⁹ Thus, the idea that such parental rights would be reinstated some time later to avoid having the child be a legal orphan is not without concern, yet states are beginning to consider that the illusive concept of legal risk or fear²⁰—that a biological parent might abuse the opportunity to petition the court for reinstatement of parental rights—should not be allowed to justify overlooking this important avenue in preventing legal orphanage.

This article argues that statutes offering the opportunity to reinstate parental rights after termination fill a current gap in an imperfect child welfare system. It examines the background of permanency planning within the child protection system, including the federal legislation driving expedited permanent placements, and uses national statistics on the child welfare system to argue that an unintended consequence of current child welfare policy is the creation of an increasing number of legal orphans. It then argues that statutes reinstating parental rights after termination are needed to maximize a child's chance of achieving legal, familial, and emotional permanency. The problems surrounding legal orphanage are examined through the lens of the Massachusetts child welfare system, followed by a multijurisdictional review of the statutory approaches to reinstatement of parental rights. Alternative methods of addressing the issue of legal orphanage are also examined, as is opposition to statutes that reinstate parental rights. It

concludes that although reinstatement of parental rights will not be indicated in many cases, the absence of statutes that permit this option results in a lost opportunity for those children for whom it may be the only chance for a permanent family.

THE CHILD WELFARE SYSTEM

A natural parent has a fundamental right to raise her child.²³ Indeed, a parent's interest in the "companionship, care, custody and management" of a child is constitutionally protected.²² Notwithstanding this constitutional principle, the doctrine of *parens patriae* recognizes that under some circumstances, the government has an overriding interest in the well-being of children.²³ This doctrine, which recognizes that the state has an unwavering responsibility to protect every child's well-being, forms the foundation of the child welfare system in the United States.²⁴ Guided by the child's best interests, the child welfare system legally intervenes in the constitutionally protected parent-child relationship when allegations of child abuse or neglect rise to a threshold level.²⁵ When a child is removed from a parent's custody and the court determines that the child cannot return home immediately, the child welfare system provides a substitute placement.²⁶ Often this means children are placed in foster care—preferentially placed with relatives/kin—but other common foster placements include a residential institution, a group home, or the home of a licensed legal stranger to the child.²⁷

While a child remains in foster care, the child welfare agency is legally required to provide services to the parents that are directed toward reunification of the child with her biological parent, whenever possible.²⁸ These services are geared toward ameliorating the parental shortcomings that led to the out-of-home placement.²⁹ When those shortcomings cannot be rectified in the timeframe set forth in ASFA, the child welfare agency is legally obligated to pursue other avenues to achieve a permanent home for the child.³⁰ In many cases, the options for permanency, such as adoption, require termination of the biological parents' rights.³¹ Every state provides a statutory mechanism for the judicial termination of a biological parent's rights.³²

Parental Termination

Biological parents' rights to the care and custody of their child do "not evaporate simply because

they have not been model parents."³³ All states require a trial in which the state must present evidence that a parent is unfit and termination of the parent-child relationship is in the child's best interest.³⁴ Although the factors that courts may consider compelling vary from state to state, generally they include abandonment, severe and/or repeated abuse or neglect, parental noncompliance with agency-created service plans geared toward reunification, mental illness, domestic violence, and long-term incarceration.³⁵ The quality and frequency of a parent's visitation while the child is in foster care may also be considered.³⁶ Judicial termination of a parent's rights occurs "not to punish parents who fail to meet their obligations to the child, but to protect the child and her interests."³⁷

Even with the assistance of a court-appointed attorney, many parents have little chance of successfully fighting a petition to terminate parental rights once the child protection agency advocates for that course.³⁸ Further, after a termination of parental rights order is entered, there is only a brief period in which a parent is permitted to appeal the order.³⁹ Thereafter, the termination order is final: The parent-child relationship is permanently severed and the child is legally freed to achieve another permanency goal, usually adoption.⁴⁰

Termination of the biological parents' rights, of course, does not guarantee that the child will be adopted.⁴¹ For each year that a child remains in foster care posttermination, the likelihood that she will be adopted decreases by 80 percent.⁴² When children are not adopted prior to reaching the age of majority, they "age out" of the foster care system as legal orphans.⁴³ These young adults are failed by the child welfare system if it ignores the possibility that a previously terminated biological parent could later become a viable option to avoid a lifetime of orphanage.⁴⁴ For these children, the very laws and policies that were enacted to expedite permanency while in substitute care create the unintended result of having them exit foster care with no permanent family at all.⁴⁵

FEDERAL LEGISLATION: THE UNINTENDED CREATION OF LEGAL ORPHANS

Although the details of termination of parental rights proceedings are governed at the state level, federal legislation provides the guiding policy for child welfare practice nationwide.⁴⁶ Federal policies

governing termination of parental rights have evolved over time, heavily favoring reunification initially and, more recently, becoming more accepting of termination.⁴⁷

The first major legislation affecting child welfare policy nationwide was the Adoption Assistance and Child Welfare Act of 1980 (AACWA). Noted for making federal funding to the states contingent on adherence to federal standards, AACWA directly impacted individual state-run child welfare systems.⁴⁸ The AACWA provided the first mechanism to address the long-identified phenomena known as "foster care drift" by requiring the reporting and tracking of all children in the foster care system.⁴⁹ "Foster care drift" refers to the extended period of time children remain in foster care away from their biological families without any definite plan to return home or be placed with another permanent family.⁵⁰ It also requires every state to direct efforts first and foremost toward reunification and family preservation.⁵¹ Under the AACWA, child welfare agencies are required to make "reasonable efforts" toward family stabilization in the parent's home prior to removing the child and continue to provide reasonable efforts throughout the out-of-home placement.⁵² AACWA gives great deference to a parent's fundamental liberty to the custody of her children, even in the face of unstable family situations.⁵³ Termination of parental rights under AACWA can only occur if all "reasonable efforts" are unsuccessful.⁵⁴ Critics of AACWA quickly emerged, condemning the law for putting natural family preservation ahead of child safety or even parental fitness.⁵⁵ Such criticism was not entirely unfounded. AACWA often prevented the permanent breakup of families experiencing only temporary hardships; however, it did little to distinguish them from families whose serious parental shortcomings all but precluded repeated removal of the children.⁵⁶

The Adoption and Safe Families Act (ASFA) was the next major federal legislation that profoundly altered the legal landscape of the child welfare system.⁵⁷ It addressed the chief criticisms that had emerged from the passage of the AACWA: Children lingering in the foster care system too long; family preservation favored to the detriment of child safety; and adoption as an underdeveloped solution to provide a permanent home for displaced children.⁵⁸ As Republican Senator Jay Rockefeller noted, ASFA places great emphasis on swiftly achieving permanency for foster children: "[t]he main objective of this bill is to move

abused and neglected kids into adoptive or other permanent homes and to do so more quickly and more safely than ever before."⁵⁹ For the first time, ASFA established strict timelines within which reunification must be pursued and termination of parental rights initiated when reunification was not achieved.⁶⁰ In order for states to be eligible for federal funding, their child welfare agencies are required to initiate proceedings to terminate parental rights when a child has spent 15 of the past 22 months in foster care.⁶¹ Although the chief purpose of ASFA was to reduce the foster care drift problem by facilitating adoption, ASFA substantially increased the frequency of the filing of petitions seeking to terminate parental rights.⁶² Indeed, adoption, as the favored permanency goal of ASFA, can only be achieved through the termination of parental rights.⁶³

Serious unintended consequences of ASFA soon began to emerge. First, many critics of ASFA argued that the shortened deadlines for the initiation of proceedings to terminate parental rights increased the likelihood that children will exit the foster care system as legal orphans.⁶⁴ Notably, although the number of termination proceedings rose dramatically under ASFA, the adoption rate did not, which created a generation of legal orphans.⁶⁵ Second, critics argued that ASFA created a false sense of security that the issue of foster care drift would be addressed.⁶⁶ In reality, ASFA puts children on a fast track to termination of parental rights without requiring that any adoptive family even be identified before ties are severed from the child's natural parents.⁶⁷ The result is that as of FY2011, more than 100,000 children nationwide now linger in the foster care system long after being legally freed for adoption, and too many are never adopted.⁶⁸ A disproportionate number of older children fall into this category.

As a result of these unintended consequences, many child welfare practitioners argue that ASFA has "done more harm than good."⁶⁹ A decade after ASFA was enacted, Congress was confronted with the real effects that termination of parental rights had on the issue of legal orphans. Its solution was to enact the Fostering Connections to Success and Increasing Adoptions Act (FCSIAA) in 2008.⁷⁰ FCSIAA provides federal funding to state welfare agencies to incentivize adoptions of older youth and to develop permanency resources for those who are at risk for aging out of the foster care system as legal orphans.⁷¹ FCSIAA also sought to reach out to extended biological family members earlier

in the foster care process by requiring that the state child welfare agency give notice to a child's relatives of the out-of-home placement.⁷² Despite these improvements, however, FCSIAA did not disturb the policy that adoption would be the preferred permanency goal for children who remain in foster care unless reunification with a parent could be achieved within the statutory time frame.⁷³ As such, FCSIAA also did not alleviate the large number of petitions seeking to terminate parental rights with respect to children for whom no adoptive home has been identified, thus contributing to the high legal orphan rate.⁷⁴

NATIONAL CHILD WELFARE STATISTICS: THE INCREASING LEGAL ORPHAN PROBLEM

It is troubling that federal legislators continue to neglect statistics demonstrating that current adoption rates are stagnant compared to rates of termination of parental rights, leaving a large number of children with little choice but to exit the foster care system as legal orphans.⁷⁵ In 2011 alone, more than 60,000 children were freed for adoption nationwide, but had not yet been adopted.⁷⁶ Further, the US Department of Health and Human Services estimates that as of September 30, 2011, there were more than 100,000 children waiting to be adopted in the foster care system.⁷⁷ Furthermore, this figure is vastly underinclusive as it reports only children currently in foster care for whom the goal is adoption; it omits those who would be available for adoption but for whom the state child protective agency has established the permanency goal to be guardianship, independent living, or emancipation.⁷⁸ Indeed, adoption rates since the enactment of ASFA have remained stagnant, particularly for older children.⁷⁹ Not surprisingly, the number of children exiting the foster care system at the age of majority as legal orphans has increased.⁸⁰

Other state and federal incentives intended to increase the rate of adoptions such as tax credits, postadoption support, and educational vouchers have not changed the low rate of adoptions from the child welfare system nationwide.⁸¹ Indeed, government statistics demonstrate that adoption of children from child welfare agencies has declined by approximately 3,000 children per year since FY2009.⁸² Further, although the total number of children in foster care decreased by approximately 100,000 between FY 2002 and FY 2009 as a result of fewer entries into the foster care system, the

number of youth who aged out of the foster care system as legal orphans increased by 45 percent.⁸³ As such, the current reality of the foster care system reflects a different type of permanency than was contemplated in the enactment of AFSA: A large number of legal orphans who leave foster care with no permanent family.

THE NEED FOR REINSTATEMENT OF PARENTAL RIGHTS STATUTES: MENDING A CRITICAL GAP

Parents whose rights have been terminated may in some circumstances maintain minimal contact with their child via "open adoption agreements" and "post-adoption contact agreements."⁸⁴ In both types, children are adopted into other families but parents retain some basic rights such as minimal contacts with the child and notifications of the child's location and progress. These options recognize the importance of maintaining familial ties after judicial termination of parental rights.⁸⁵ But for children freed for adoption prior to the identification of a potential adoptive resource, known colloquially as a "recruitment adoption," courts are wary of imposing any visitation or contact terms that may be viewed as burdensome to a future prospective adoptive family. As a result, for those who are never adopted, there is currently no legal mechanism for reestablishing the same contact with their birth parents.⁸⁶ Compounding this problem, many states still do not offer reinstatement of parental rights for children "left orphaned by the routine operation of the child welfare system."⁸⁷ Without a permanent adoptive family and limited alternative permanency options, the future of a terminated child who has aged out of the foster care system, or reached the age of majority, is bleak.⁸⁸

Current child welfare policy offers "independent living" or "emancipation" as acceptable permanency goals for foster youth that are approaching the age of majority and will be aging out of the system.⁸⁹ The research is clear that these children are "woefully unprepared" to tackle the challenges of adult life.⁹⁰ Indeed, only 33 percent have obtained a driver's license and less than 40 percent have at least \$250.⁹¹ Studies demonstrate dire long-term outcomes for these youth. For terminated youth who age out of the foster care system as legal orphans, studies have found that 37 percent do not graduate from high school, 50 percent are unemployed, 33 percent are on public assistance,

19 percent of females give birth to children out of wedlock, and 27 percent of males (and 10 percent of females) are incarcerated within 18 months of beginning their "independent living."⁹²

A "legal orphan" has no formal tie to any parent.

Given these dim realities, it should not be surprising that many terminated children want to seek out and maintain connections to their terminated biological families.⁹³ Indeed, familial, genetic, and emotional bonds are not as easily or quickly severed as legal ones.⁹⁴ Terminated children feel "a tremendous sense of loss and abandonment" when separated from their biological families, in spite of the difficulties and trauma that they may have endured while with them.⁹⁵ Studies on postfoster care outcomes for legal orphans consistently find that many of these children informally reunify with their biological parents once they reach the age of majority, regardless of the legal status of the biological parents or their length of time in foster care.⁹⁶ Further, research confirms that legal orphans seek out these relationships to their biological families regardless of whether the child welfare service providers encouraged or even maintained these relationships while in foster care.⁹⁷

Indeed, research indicates that 53 percent of youth who have aged out of the foster care system reported having daily contact with one member of their birth family and more than 83 percent reported having weekly contact with at least one birth family member.⁹⁸ Nor is the child welfare community ignorant of this fact; as one New York Family Court judge noted "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."⁹⁹ Yet this informal reunification process carries much more risk than what could be accomplished with a parental rights reinstatement statute.¹⁰⁰ For instance, the informal reunification does not allow the state to require that the parent's shortcomings that led to termination have been addressed prior allowing the young adult to reconnect with the parent.¹⁰¹ It also does not allow the state to provide support from social workers or other services to facilitate the reunification, including services that might

alleviate the tensions associated with extended separation and ease the transition back to a biological parent.¹⁰² This informal reunification process also fails to restore the legal rights that were judicially severed. On the other hand, reinstated parents could once again be responsible for school enrollment, tuition payments, providing health insurance, sharing in medical decision-making for the youth, and facilitate inheritance.¹⁰³

Options for permanency, (e.g., adoption) require termination of biological parental rights.

A permanent family, whether biological or adoptive, has the potential to provide comfort, security, and a model for a safe and strong familial network of support.¹⁰⁴ Importantly, for children who reach the age of majority in the foster care system without a permanent adoptive family or a mechanism to legally reconnect with their biologically terminated family, legal orphans lack a vital safety net.¹⁰⁵ Of course, not every terminated parent, when given an opportunity, will be able to demonstrate capacity to overcome the circumstances that led to the termination of her legal rights.¹⁰⁶ Nonetheless, as one advocate suggests "[e]ven if it is right for one or two youth a year, it is worth it!"¹⁰⁷

CASE STUDY: MASSACHUSETTS

The Permanency Problem

In April 2010, a class action lawsuit was filed in the federal district court for the District of Massachusetts on behalf of approximately 8,500 children statewide who are now in foster care or who will be in the future as a result of parental abuse or neglect.¹⁰⁸ The lawsuit alleged that the state child welfare agency, the Massachusetts Department of Children and Families (DCF), violated the children's legal rights under the US Constitution and various federal statutes by acts and omissions that (1) allowed children in its custody to suffer further harm at the hands of the agency charged with protecting them and (2) failed to achieve permanency for them.¹⁰⁹ The lawsuit addressed a "myriad of systemic defects" but the matter of Adam S. is particularly poignant.

Adam was removed from his biological mother due to allegations of neglect.¹¹⁰ DCF placed Adam in a foster home that DCF had also approved as a preadoptive placement, far from his family and neighbors.¹¹¹ The foster parents had already adopted two children from DCF and had other foster children in their home before they adopted Adam.¹¹² When Adam was nine years old, he disclosed to a school teacher that “his adoptive parents regularly forced him to get down on his hands and knees” in order to beat him.¹¹³ Although a DCF investigation found insufficient evidence to support removing him and his adoptive siblings from the home, DCF and the adoptive couple agreed to close the foster home.¹¹⁴ Not long after, the couple withdrew Adam from school, reporting that they planned to school him at home instead.¹¹⁵

AACWA defers to a parent’s fundamental liberty to custody.

Less than one year later, one of Adam’s adoptive sisters disclosed to school authorities that their adoptive mother badly beat a younger adoptive sister.¹¹⁶ Again, DCF investigated and concluded that no abuse occurred.¹¹⁷ The other sister later produced photos of her younger sister’s bruises and further investigation finally resulted in removal of all of the children.¹¹⁸ A criminal trial proceeded, although by then the adoptive father had passed away, but the adoptive mother was later convicted of child abuse.¹¹⁹ Adam was placed with his adoptive siblings in another foster home.¹²⁰ Within one week, Adam was admitted to a psychiatric facility upon threats that he would harm himself.¹²¹ He was never again placed together with his adoptive siblings.¹²² Instead, Adam remained in a locked psychiatric ward for two months, was moved to specialized foster care for a short period of time (and removed when the home was unable to meet his needs), admitted to a emergency stabilization unit, and then placed in a residential treatment program where he remained for four years.¹²³

When Adam was discharged from the residential treatment program, DCF again attempted to place him in a foster home, but the foster parents soon reported that they could not handle him.¹²⁴ As a result, Adam entered yet another residential treatment program, this one designed especially for youthful sex offenders, a diagnosis inapplicable

to Adam.¹²⁵ At that program, Adam reported being “brutally beaten” in an attack orchestrated by a staff member. He also reported being “repeatedly raped by another boy in the program” while staff members increased the television volume to avoid hearing his pleas for help.¹²⁶ DCF investigated both instances and determined that Adam was attacked, but as to the alleged rape, concluded no wrongdoing had occurred on the part of the staff at the facility.¹²⁷ The facility later closed.¹²⁸ Adam was then moved to yet another residential program where he remained two years later, at the time the lawsuit was filed some two years later.¹²⁹

ASFA has strict timeliness for reunification.

At age 16, Adam had lived almost half of his life in foster care.¹³⁰ He had seven placements, at least two of which resulted in physical and psychological harm.¹³¹ With two years remaining until he aged out of the foster care system, he was no closer to finding a permanent family.¹³²

Although the horrific trauma Adam experienced while in DCF custody is the exception, his extensive placement history and lack of permanency is shared by many youth in the Massachusetts foster care system. A significant portion of the approximately 2,500 children in foster care with a goal of adoption linger in the foster care system for years.¹³³ Indeed, during the last federal audit, Massachusetts ranked the 13th worst among the 47 jurisdictions that reported data regarding securing timely adoptions.¹³⁴ In 2009, nearly 900 children aged out of foster care without a permanent family, half of whom had spent at least the previous three years in the foster care system.¹³⁵ Forty-six percent of children with a goal of adoption in the Massachusetts foster care system have already been in foster care for two or more years; 13 percent had been in the system for more than four years.¹³⁶ Partially fueling this stagnancy is the dramatic and steady decline in the number of annual adoptions in Massachusetts over the past 15 years.¹³⁷

The Proposed Bills in Massachusetts

In its 2013–2014 legislative session, Massachusetts introduced companion House and Senate Bills intended to address the growing incidence of legal orphans. Senate Bill 798 proposes an act rescinding

an order terminating parental rights.¹³⁸ The companion House Bill, H.1436, contains identical language.¹³⁹ The bills would permit a child to petition the court to vacate the order terminating one or both of her parents' parental rights if all of the following conditions are met: (1) the child is at least 12 years old; (2) at least two years have passed since the termination order; (3) the child's permanency plan is no longer adoption; and (4) either the child has not yet been adopted or an adoption occurred but was disrupted.¹⁴⁰ As proposed, the act would apply retroactively to termination orders entered before the effective date of the act.¹⁴¹ Upon receipt of the petition, the court would be required to hold an evidentiary hearing and notify the parents. Despite this procedural requirement, the parent(s) are not accorded party status at the hearing and do not have an independent right to be heard.¹⁴² If the court finds it is in the best interest of the child to vacate the previous order terminating parental rights, the court may grant the child's petition and vacate the termination order. In so doing, the court would enter a new dispositional order to address permanent custody.¹⁴³ As a result, parental rights would be restored.

Familial, genetic, and emotional bonds are not as easily severed as legal ones.

MULTIJURISDICTIONAL APPROACHES TO THE LEGAL ORPHAN PROBLEM

Informal reunification of legal orphans after the age of majority with their previously terminated birth parents is a recurring pattern nationwide in the face of stagnant adoption rates.¹⁴⁴ Despite this, informal reunification with birth parents still leaves these young adults in a "legal limbo,"¹⁴⁵ with no formal mechanism for having that once-terminated parent officially resume legal responsibility. In the absence of statutes that permit petitions to reinstate parental rights during a child's minority, courts have created a convoluted legal patchwork to attempt to diminish legal orphanhood when the children's best interests so require.¹⁴⁶ As described below, these patchwork remedies are neither comprehensive as to the rights they reinstate nor consistent in application across jurisdictions.¹⁴⁷

Most actions that seek to reinstate the terminated parent-child relationship are dismissed at their outset under the doctrine of *res judicata*.¹⁴⁸ Indeed, many courts interpret the doctrine of *res judicata*, which includes claim preclusion and collateral estoppel, as a bar from hearing any action that may constitute a collateral attack on the original judgment terminating parental rights.¹⁴⁹ Those parents who successfully avoid dismissal on the basis of *res judicata* have argued that termination orders are based only upon conditions present at the time of trial.¹⁵⁰ In *Green v. State Dep't of Health and Rehabilitative Servs.*,¹⁵¹ for example, a Florida appellate court determined that affirmative defenses such as *res judicata* and estoppel do not bar a natural parent whose parental rights have been terminated from later attempting to reinstate that parent-child relationship via adoption if that parent's circumstances have changed. Explaining that "when the circumstances supporting the order of commitment are no longer present at the time an adoption petition is filed, estoppel by judgment may not be invoked to prevent litigation of the adoption issues," the court left open the possibility that a biological parent who had her parental rights terminated could later seek to reinstate the parent-child relationship in a different legal action, such as adoption.¹⁵²

Most actions to reinstate terminated parental rights are dismissed based on res judicata.

REINSTATING A TERMINATED PARENT

Some terminated parents who are not barred by *res judicata* have attempted to adopt their biological children. Results are varied. First and foremost, many states statutorily prohibit biological parents whose parental rights have been terminated from adopting their own children at a later time.¹⁵³ Indeed, the purpose of terminating a parent's rights was to leave her without legal standing to intervene in a subsequent adoption proceeding regarding the child.¹⁵⁴ Of course, this also renders the terminated parent without legal standing to adopt her own child at a later time to avoid the youth becoming a legal orphan.¹⁵⁵ Even in states in which statutes and case law are silent regarding the legal standing of terminated parents, the original finding of

parental unfitness underlying the termination presents a large barrier in the adoption process for the parent.¹⁵⁶ In order to preserve the finality of termination and avoid putting a later adoption at risk, courts typically disfavor allowing a terminated parent to re-litigate the termination issues even in the absence of a statutory prohibition and even under circumstances in which a subsequent adoption occurred and was disrupted.¹⁵⁷ Thus, even when a child is headed toward legal orphanage, many courts still foreclose this option.

Even when guardianship is permitted, a child becomes a "legal orphan" at the age of majority.

When adoption by a once-terminated parent is barred, some biological parents have also attempted to use custodial petitions, known in many states as guardianships.¹⁵⁸ This legal avenue has also encountered limited success. For instance, in the Ohio case of *In re McBride*,¹⁵⁹ a biological mother whose parental rights were terminated was found to have no legal standing to petition the court for custody of her child at a later time. In that case, the biological mother whose rights as to the child were terminated in 1997, later filed a custodial petition in 2003 upon learning that the child had not yet been adopted. Rather, the child had been bounced from numerous institutions and foster homes, and expressed a longing desire to not be adopted.¹⁶⁰ The Ohio Supreme Court determined that although the Ohio juvenile court rule permitted "any person"¹⁶¹ to apply for a custody petition, nonetheless there was a statutory bar prohibiting a parent who has lost parental rights of a child to have standing to file a petition for custody of that child.¹⁶²

Even when guardianships are permitted, however, the full panoply of parental rights is not reinstated.¹⁶³ Although guardians are responsible for medical care, school enrollment, and many other decisions, they lack authority for certain financial decisions and, most importantly, their authority ceases when the youth reaches the age of majority.¹⁶⁴ Accordingly, even when guardianship by a terminated parent may be permitted, the child reverts to the status of legal orphan at the age of majority.¹⁶⁵

As this brief survey demonstrates, states without reinstatement provisions have few tools available

to avoid legal orphanage. Only those with statutory authority permitting a petition to reinstate parental rights following a judicial termination provide a viable path to avoiding legal orphanage when it appears that restoring a parental relationship is in the best interest of the child.

Varied States' Parental Rights Reinstatement Statutes

As of the end of 2013, at least 15 states¹⁶⁶ had enacted legislation providing a process through which a court may modify or vacate an order terminating parental rights or reinstate parental rights.¹⁶⁷ Such issues as who may petition for such relief, what conditions precedent must exist, and the applicable burden of proof differ substantially from state-to-state.

In a majority of states, the child, the child's attorney or the state child protective service is entitled to petition the court to reinstate parental rights.¹⁶⁸ Six states also permit a parent to bring the petition.¹⁶⁹ Alaska¹⁷⁰ and Iowa¹⁷¹ grant a right to petition exclusively to the parent, while California¹⁷², Oklahoma,¹⁷³ and Washington¹⁷⁴ grant the right exclusively to the child. Maine¹⁷⁵ permits only the child welfare agency to petition for reinstatement of parental rights. Georgia¹⁷⁶ and Michigan¹⁷⁷ permit any interested party to initiate the petition.

In some states, only the child can initiate a reinstatement petition.

States also differ in determining the minimum age of the subject child at which a court may consider the petition. Promoting the goal of allowing older children for whom permanency has not been achieved an opportunity to reunite with their biological family, eight states¹⁷⁸ require that the child be at least 12 years old for a party to seek relief from a termination of parental rights order. This is not universal, however. Six¹⁷⁹ of the 15 states place no limit on the age of the child, requiring only that permanency has not been achieved for the child since parental rights were terminated. Finally, in Louisiana¹⁸⁰ a parent may move to vacate a termination of parental rights order only if the child is a newborn and such a request is made within 30 days of the order.¹⁸¹

The period of time that parents must wait for an alternative permanency plan to succeed

posttermination before seeking to reinstate their own parental rights also varies substantially. Alaska,¹⁸² Georgia,¹⁸³ Louisiana,¹⁸⁴ Nevada,¹⁸⁵ and West Virginia¹⁸⁶ have set no minimum time for the state to explore other permanency options, while California,¹⁸⁷ Illinois,¹⁸⁸ North Carolina,¹⁸⁹ Oklahoma,¹⁹⁰ and Washington¹⁹¹ require that at least three years pass before challenging the order. Hawaii,¹⁹² Maine,¹⁹³ and New York¹⁹⁴ fall in between, each requiring that at least one year have elapsed since the termination. Iowa¹⁹⁵ and Michigan,¹⁹⁶ on the other hand, require only days to pass before a termination order may be challenged.

Lastly, the nature of the proceeding and the burden of proof required to reinstate parental rights differs among states. In all states where reinstatement statutes exist, the best interests of the child is the overarching theme, as is proof of changed circumstances. Specifically, the petitioning party must demonstrate that the conditions that brought the child into state custody have been resolved and that the parent(s) are now capable of providing care and safety for the child. Only in Oklahoma¹⁹⁷ and Washington¹⁹⁸ are both a preliminary hearing and a hearing on the merits contemplated. Five states¹⁹⁹ do not specify the burden of proof to reinstate parental rights. Seven²⁰⁰ require clear and convincing evidence that the parent has remedied the condition that caused the termination. They also require evidence that both the parent and the child desire the reinstatement, that the previous permanency plan was not achieved and is not likely to be imminently achieved, and that the parent is now capable of keeping the child safe. Individual statutes consider other factors as well. Only Nevada uses the lesser standard of a preponderance of the evidence to evaluate the reinstatement decision.²⁰¹

OPPOSITION TO STATUTES THAT REINSTATE PARENTAL RIGHTS

Historically, states have prevented biological parents from challenging any court order pertaining to the custody of a child after their parental rights have been terminated. The rationale was to prevent delay in achieving another permanent placement, such as adoption.²⁰² Thus, it is not surprising that in states in which legislation has been introduced to reinstate parental rights, the adoption community has offered a loud voice of opposition. Citing a potential chilling effect on the adoption process, adoption proponents argue that

prospective families might be reluctant to consider adoption if a biological parent were allowed to interfere with or "derail"²⁰³ a pending adoption by means of reinstatement of their parental rights.²⁰⁴ Indeed, legislative history from California, where a statute exists permitting reinstatement of parental rights, supports the premise that opponents were concerned that biological parents might abuse the opportunity to petition for reinstatement and thus chill adoptions.²⁰⁵

Opposition to legislation reinstating parental rights has also surfaced from practitioners in the child welfare field who express concern about the possibility that a biological parent could complicate the life of a terminated child who does not want to reunify with the parent.²⁰⁶ In response, states such as California and Washington have enacted parental rights reinstatement statutes that give only the child the opportunity to initiate such a petition.²⁰⁷ Child welfare practitioners successfully argued that since the ultimate purpose of any parental rights reinstatement statute was to provide another permanency option, reinstatement petitions should occur only on the initiative of the child.²⁰⁸

Some scholars, however, have argued that this type of restriction in parental rights reinstatement statutes places an unrealistic and overly heavy burden on terminated children.²⁰⁹ For instance, in cases in which the child welfare agency disagrees with the child's prerogative to reunify with the biological parent, the child may not have access to the information necessary to determine whether the parent seeks reunification and is currently fit to resume custody.²¹⁰ Under the best of circumstances, it is a huge burden for a child to be responsible for such a decision. Further, not all jurisdictions provide legal representation to children, thus diminishing the likelihood that a child would even have a meaningful opportunity to petition the court on her own.²¹¹ The strongest opposition to parental rights reinstatement statutes, however, may not stem from any legal source: It may be the silently held beliefs of child welfare agency employees. For them to support reinstatement of parental rights, they must be open to considering the possibility that the termination process they initiated some years earlier might have been premature, avoidable, or simply ill-advised:

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

[child welfare] agency leadership and social workers need to be open to a new view of the parent and believe that parents can change.²¹²

CONCLUSION

Although the majority of this article has been dedicated to advocating for statutes that reinstate judicially terminated parental rights, there are certainly situations in which a final and irrevocable termination of parental rights is indicated.²¹³ There are also many circumstances in which terminated parents and their children would decline subsequent review of the termination.²¹⁴ Nonetheless, the current child welfare policies and statutes—intended to promote timely permanency for all children in foster care—create a serious risk of their being terminated from one family without any realistic chance of being adopted into another, thus resulting in a child becoming a legal orphan.²¹⁵

In those cases in which biological parents have reformed themselves and the child welfare agency has failed to find another permanency option for the child, the best interests of the child may require that terminated parents at least be considered as the child's best chance for permanency and a "forever family."²¹⁶ Practitioners in the child welfare arena, dealing with one of the most vexing issues facing foster children, have a duty to advocate for legislative, judicial, and regulatory changes that make every effort to avoid paths that leads to legal orphanage.²¹⁷

NOTES

1. Misty Stenslie, *The Privilege of Family*, CW360*: A COMPREHENSIVE LOOK AT A PREVALENT CHILD WELFARE ISSUE, Spring 2009 at 28.

2. Sania Metzger, *Promoting Permanence for "Legal Orphans"*, CW360*: A COMPREHENSIVE LOOK AT A PREVALENT CHILD WELFARE ISSUE, Spring 2009, at 27.

3. US Department of Health and Human Services (HHS), Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, The Adoption and Foster Care Analysis and Reporting System (AFCARS) Report Preliminary FY 2011, <http://www.acf.hhs.gov/programs/cb/resource/afcars-report-19>.

4. Metzger, *supra*, n.2, at 27.

5. PL 105 - 89, Adoption and Safe Families Act (ASFA).

6. Madelyn Freundlich, *Adolescents in the Child Welfare System: Improving Permanency and Preparation for Adulthood Outcomes*, CW360*: A COMPREHENSIVE LOOK AT A PREVALENT CHILD WELFARE ISSUE, Spring 2009, at 4.

7. Melissa Carter and Kirsten Widner, *Reinstatement of Parental Rights: An Important Step Toward Solving the Problem of Legal Orphans*, Georgia Office of the Child Advocate, 2009 white paper, at 1.

8. "Foster care drift" describes the situation "in which children stay in foster care indefinitely while their parents struggle toward a reunification that may never happen." *Id.*

9. *Id.*

10. *Id.* at 2.

11. In 2011, there were 61,361 children who had been freed for adoption but had not yet been adopted nationwide. HHS, *supra*, n.3, [The Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case-level information on all children in foster care and those who have been adopted with title IV-E agency involvement.], <http://www.acf.hhs.gov/programs/cb/resource/afcars-report-19>.

12. Carter and Widner, *supra*, n.7, at 1.

13. Metzger, *supra*, n.2, at 27.

14. Carter and Widner, *supra*, n.7, at 3.

15. *Id.*

16. *Id.* at 4.

17. Metzger, *supra*, n.2, at 27.

18. Carter and Widner, *supra*, n.7, at 4.

19. Randi J. O'Donnell, "A Second Chance for Children and Families: A Model Statute to Reinstate Parental Rights After Termination," 48(2) *Fam. Ct. Rev.* 362, 365 (2010).

20. O'Donnell, *supra*, n.19, at 372.

21. *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923) (the right to have and raise one's children is "essential"); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (the right to have and raise children is one of the "basic civil rights of man"); *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944) ("[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents").
22. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).
23. Paula Polasky, "Customary Adoptions for Non-Indian Children: Borrowing from Tribal Traditions to Encourage Permanency for Legal Orphans Through Bypassing Termination of Parental Rights," 30 *Law & Ineq.* 401, 405-406 (2012).
24. *Id.*
25. Lashanda Taylor, "Resurrecting Parents of Legal Orphans: Un-Terminating Parental Rights," 17 *Va. J. Soc. Pol'y & L.* 318, 322 (2010).
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* Note that adoptive parents' rights may be terminated using the same statutes and procedures as a biological parent. However, since it is rarer and for the purposes of clarity, we will refer to biological parents' rights only in this paper.
32. Ala. Code § 12-15-319 (2013); Alaska Stat. §§ 47.10.011; 47.10.080; 47.10.086; 47.10.088 (2013); American Samoa Ann. Code §§ 45.0401; 45.0103(19) (2013); Arizona Rev. Stat. § 8-533 (2013); Arkansas Ann. Code § 9-27-341 (2013); California Welf. & Inst. Code §§ 361.5; 366.26 (2013); Colorado Rev. Stat. § 19-3-604(2013); Connecticut Gen. Stat. §§ 17a-111a; 17a-111b; 17a-112 (2013); Delaware Ann. Code Tit. 13, § 1103 (2013); District of Columbia Ann. Code §§ 16-2353; 16-2354 (2013); Florida Ann. Stat. § 39.806 (2013); Georgia Ann. Code §§ 15-11-58; 15-11-94 (2013); Guam Ann. Code Tit. 19, § 4303 (2013); Hawaii Rev. Stat. §§ 571-61; 587A-4 (2013); Idaho Code § 16-2005 (2013); Illinois Comp. Stat. Ch. 705, § 405/1-2; Ch 750, § 50/1 (2013); Indiana Ann. Code §§ 31-34-21-5.6; 31-35-2-4.5 (2013); Iowa Ann. Stat. §§ 232.102; 232.111; 232.116 (2013); Kansas Ann. Stat. §§ 38-2269; 38-2271 (2013); Kentucky Rev. Stat. § 625.090 (2013); Louisiana Children's Code art. 1015 (2013); Maine Ann. Stat. Tit. 22, § 4055 (2013); Maryland Family Law § 5-525.1 (2013); Massachusetts Ann. Laws Ch. 119, §§ 26, 29C; Ch. 210, § 3 (2013); Michigan Comp. Laws § 712A.19b (2013); Minnesota Ann. Stat. §§ 260.012; 260C.301 (2013); Mississippi Ann. Code § 93-15-103 (2013); Missouri Ann. Stat. § 211.447 (2013); Montana Ann. Code §§ 41-3-423; 41-3-609 (2013); Nebraska Rev. Stat. § 43-292 (2013); Nevada Rev. Stat. §§ 128.105; 128.106; 432B.393 (2013); New Hampshire Rev. Stat. §§ 169-C:24-a; 170-C:5 (2013); New Jersey Ann. Stat. §§ 30:4C-11.2; 30:4C-15 (2013); New Mexico Ann. Stat. §§ 32A-4-28; 32A-4-2 (2013); New York Soc. Serv. Law §§ 358-a; 384-b (2013); North Carolina Gen. Stat. § 7B-1111 (2013); North Dakota Cent. Code §§ 27-20-02; 27-20-44 (2013); Northern Mariana Islands Commonwealth Code Tit. 8, § 1418 (2013); Ohio Rev. Stat. § 2151.414 (2013); Oklahoma Ann. Stat. Tit. 10A, § 1-4-904 (2013); Oregon Rev. Stat. §§ 419B.502; 419B.504; 419B.506; 419B.508 (2013); Pennsylvania Cons. Stat. Tit. 23, § 2511 (2013); Puerto Rico Ann. Laws Tit. 31, §§ 634a; 634b (2013); Rhode Island Gen. Laws § 15-7-7 (2013); South Carolina Ann. Code §§ 63-7-1710; 63-7-2570 (2013); South Dakota Ann. Laws §§ 26-8A-26; 26-8A-26.1; 26-8A-27 (2013); Tennessee Ann. Code § 36-1-113 (2013); Texas Fam. Code §§ 161.001; 161.002(b); 161.007 (2013); Utah Ann. Code §§ 78A-6-507; 78A-6-508 (2013); Vermont Ann. Stat. Tit. 15A, § 3-504 (2013); Virgin Islands Ann. Code Tit. 5, § 2550 (2013); Virginia Ann. Code § 16.1-283 (2013); Washington Rev. Code §§ 13.34.132; 13.34.180 (2013); West Virginia Ann. Code § 49-6-5 (2013); Wisconsin Ann. Stat. § 48.415 (2013); Wyoming Ann. Stat. § 14-2-309 (2013).
33. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).
34. O'Donnell, *supra*, n.19, at 365.
35. Taylor, *supra*, n.25, at 325.
36. *Id.*
37. *C.A. v. Dep't of Child. And Families*, 16 So. 3d 888, 889 (Fla. Dist. Ct. App. 2009).
38. Taylor, *supra*, n.25, at 325.
39. O'Donnell, *supra*, n.19.
40. Polasky, *supra*, n.23, at 401-402.
41. Taylor, *supra*, n.25, at 325-26.

42. *Id.*
43. Susan Getman and Steve Christian, Reinstating Parental Rights: Another Path to Permanency? *Protecting Children: A Professional Publication of the American Humane Association*, 26(1) 58, 59 (2011).
44. *Id.*
45. *Id.*
46. Polasky, *supra*, n.23, at 402.
47. *Id.* at 405.
48. Taylor, *supra*, n.25, at 323.
49. Elizabeth Kennedy Hartley M.S.W, "Government leadership to protect children from foster care "drift"," 8(3) *Child Abuse Negl* 337, 337 (1984).
50. *Id.*
51. 42 U.S.C. §§ 670 et seq., P.L. 96-272.
52. *Id.*
53. Traci Carey, Trading Family for Permanency: Legal Orphanage under the Adoption and Safe Families Act, 11(4) *Michigan Child Welfare Law Journal* 3, 5 (2008).
54. *Id.*
55. Taylor, *supra*, n.25, at 323.
56. Carey, *supra*, n.53.
57. Taylor, *supra*, n.25, at 323 (2010).
58. *Id.*
59. 143 CONG. REC. 12199 (1997) (statement of Sen. Rockefeller).
60. Taylor, *supra*, n.25, at 323–24.
61. O'Donnell, *supra*, n.19, at 364.
62. Polasky, *supra*, n.23, at 415.
63. *Id.*
64. *Id.* at 402.
65. *Id.* at 415.
66. *Id.*
67. Carey, *supra*, n.53, at 7.
68. *Id.*
69. *Id.* at 408.
70. *Id.* at 415.
71. *Id.* at 408–409.
72. *Id.* at 409.
73. *Id.* at 420.
74. *Id.* at 414.
75. *Id.* at 416.
76. HHS, *supra*, n.3.
77. *Id.*
78. Taylor, *supra*, n.25, at 326.
79. Polasky, *supra* note 23, at 407–408.
80. *Id.*
81. Metzger, *supra*, n.2.
82. HHS, *supra*, n.3.
83. Getman and Christian, *supra*, n.43, at 60.
84. O'Donnell, *supra*, n.19, at 366.
85. Taylor, *supra*, n.25, at 352.
86. *Id.*
87. Carter and Widner, *supra*, n.7, at 2.
88. O'Donnell, *supra*, n.9, at 363.
89. *Id.* at 364.
90. Miriam Aroni Krinsky and Theo Liebmann, "Charting a Better Future for Transitioning Foster Youth: Executive Summary of Report From a National Summit on the

Fostering Connections to Success Act," 49(2) *Family Court Review* 292, 292 (2011).

91. *Id.*

92. Polasky, *supra*, n.23, at 419.

93. Getman and Christian, *supra*, n.43, at 62.

94. Carter and Widner, *supra*, n.7, at 4.

95. O'Donnell, *supra*, n.19, at 363.

96. Getman and Christian, *supra*, n.43, at 63.

97. O'Donnell, *supra*, n.19, at 367.

98. Getman and Christian, *supra*, n.43, 62 (2011).

99. O'Donnell, *supra*, n.19, at 364.

100. *Id.* at 367.

101. *Id.*

102. *Id.*

103. *Id.* at 364.

104. Freundlich, *supra*, n.6.

105. *Id.*

106. Taylor, *supra*, n.25, at 319.

107. Getman and Christian, *supra*, n.43, at 63.

108. Complaint at 1, ¶ 1, *Connor B. v. Patrick, et al.*, No. 10-cv-30073 (1st Cir. Filed April 5, 2010).

109. *Id.* at 1, ¶ 2.

110. *Id.* at 10, ¶ 36.

111. *Id.*

112. *Id.*

113. *Id.* at 10-11, ¶ 37, *Connor B. v. Patrick, et al.*, No. 10-cv-30073 (1st Cir. Filed April 5, 2010).

114. *Id.*

115. *Id.*

116. *Id.* at 11, ¶ 39, *Connor B. v. Patrick, et al.*, No. 10-cv-30073 (1st Cir. Filed April 5, 2010).

117. *Id.* at 11, ¶ 40, *Connor B. v. Patrick, et al.*, No. 10-cv-30073 (1st Cir. Filed April 5, 2010).

118. *Id.*

119. *Id.* at 11, ¶ 38-40.

120. *Id.* at 11, ¶ 43.

121. *Id.*

122. *Id.*

123. *Id.* at 11-12, ¶ 44-49.

124. *Id.* at 12, ¶ 50.

125. *Id.* at 12, ¶ 51.

126. *Id.* at 12, ¶ 53-54.

127. *Id.* at 12, ¶ 53.

128. *Id.* at 12, ¶ 54.

129. *Id.* at 13, ¶ 55.

130. *Id.* at 10, ¶ 35.

131. *Id.*

132. *Id.* at 13, ¶ 56.

133. *Id.* at 2, ¶ 5c.

134. *Id.*

135. *Id.* at 43, ¶ 196.

136. *Id.* at 42, ¶ 192.

137. *Id.* at 42, ¶ 193.

138. MA H1436.

139. MA S798.

140. MA H1436, MA S798.

141. *Id.*

142. *Id.*
143. *Id.*
144. Getman and Christian, *supra*, n.43, 63.
145. *Id.*
146. Taylor, *supra*, n.25, at 321.
147. *Id.*
148. *Id.* at 345.
149. *Id.*
150. *Id.* at 346.
151. 412 So.2d 413, 415 (Fla. Dist. Ct. App. 1982).
152. *Id.*
153. *See for ex:* ALA. CODE §26-10A-28 (2013); *see also* O'Donnell, *supra*, n.19, at 367.
154. O'Donnell, *supra*, n.19, at 367.
155. *Id.*
156. Getman and Christian, *supra*, n.43, at 63.
157. Taylor, *supra*, n.25, at 338–39.
158. Taylor, *supra*, n.25, at 339.
159. 850 N.E. 2d 43, 47 (Ohio 2006).
160. *Id.*
161. *See* Ohio Rules of Juvenile Procedure R. 10 (2013).
162. *Supra*, n.159.
163. Getman and Christian, *supra*, n.43, at 63.
164. Taylor, *supra*, n.25, at 341.
165. *Id.*
166. Alaska, California, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Nevada, New York, North Carolina, Oklahoma, Washington, and West Virginia.
167. *See also* Child Welfare Information Gateway. (2013). *Grounds for involuntary termination of parental rights*. Washington, DC: US Department of Health and Human Services, Children's Bureau.
168. Hawaii Rev. Stat. § 587A-34; Illinois Comp. Stat. Ch. 705 § 405/2-34; Louisiana Children's Code Art. 1051, 1052, 1053; Nevada Rev. Stat. § § 128.170, 128.190; New York Fam. Ct. Act. § 635, 636, 637; North Carolina Gen. Stat. § 7B-1114; and West Virginia Ann. Code § 49-6-6.
169. Alaska Stat. § 47.10.89; Georgia Ann. Code § 15-11-40; Iowa Ann. Stat. § 232.117(10); Michigan Comp. Laws § 712A.20, 712A.21; New York Fam. Ct. Act. § 635, 636, 637; and West Virginia Ann. Code § 49-6-6.
170. Alaska Stat. § 47.10.89.
171. Iowa Ann. Stat. § 232.117(10).
172. California Welf. & Inst. Code § 366.26(i)(3).
173. Oklahoma Ann. Stat. Tit. 10A § 1-4-909.
174. Washington Rev. Code § 13.34.215.
175. Maine Ann. Stat. Tit. 22, § 4059.
176. Georgia Ann. Code § 15-11-40.
177. Michigan Comp. Laws § 712A.20, 712A.21.
178. California Welf. & Inst. Code § 366.26(i)(3) (12 years old with some exceptions); Hawaii Rev. Stat. § 587A-34 (14 years old); Illinois Comp. Stat. Ch. 705 § 405/2-34 (13 years old with exceptions); Louisiana Children's Code Art. 1051, 1052, 1053 (15 years old); New York Fam. Ct. Act. § 635, 636, 637 (14 years old); North Carolina Gen. Stat. § 7B-1114 (12 years old with exceptions); Oklahoma Ann. Stat. Tit. 10A § 1-4-909 (15 years old); Washington Rev. Code § 13.34.215 (12 years old with some exceptions).
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180. Louisiana Children's Code Art. 1051, 1052, 1053.
181. *Supra*, n.171.
182. *Supra*, n.170.

183. *Supra*, n.176.
184. *Supra*, n.180.
185. Nevada Rev. Stat. § § 128.170, 128.190.
186. West Virginia Ann. Code § 49-6-6.
187. *Supra*, n.172.
188. Illinois Comp. Stat. Ch. 705 § 405/2-34.
189. North Carolina Gen. Stat. § 7B-1114.
190. *Supra*, n.173.
191. *Supra*, n.174.
192. Hawaii Rev. Stat. § 587A-34 (1 year posttermination).
193. Maine Ann. Stat. Tit. 22, § 4059 (1 year posttermination).
194. New York Fam. Ct. Act. § 635, 636, 637 (2 years posttermination).
195. *Supra*, n.171.
196. *Supra*, n.177 (20 days).
197. *Supra*, n.173.
198. *Supra*, n.174.
199. Georgia, Iowa, Louisiana, Michigan, and North Carolina.
200. Alaska, California, Hawaii, Illinois, Maine, New York, and West Virginia.
201. Nevada Rev. Stat. § § 128.170, 128.190.
202. Cameryn Schmidt and Brenda Dabney, "Restoring Parental Rights: Giving Legal Orphans a Chance at a Family," 22(11) *Child Law Practice* 170, 170 (2007).
203. *Id.*
204. Getman and Christian, *supra*, n.43, at 65.
205. O'Donnell, *supra*, n.19, at 372.
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. Getman and Christian, *supra*, n.43, at 66.
213. Taylor, *supra*, n.25, at 362.
214. *Id.*
215. Getman and Christian, *supra*, n.43, at 59.
216. Getman and Christian, *supra*, n.43, at 67.
217. Schmidt and Dabney, *supra*, n.202, at 171.

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