



**REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

Restoration of Parental Rights

REPORT DOCUMENT 12

**COMMONWEALTH OF VIRGINIA
RICHMOND
2013**



COMMONWEALTH of VIRGINIA
Commission on Youth

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January 14, 2013

TO: The Honorable Robert F. McDonnell, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2012 General Assembly Session, Delegate David Toscano and Senators George Barker and Barbara Favola introduced legislation to provide a process for the restoration of parental rights for those parents whose rights to their child were previously terminated. The Senate and House Courts of Justice Committees reviewed these bills and, determining that further study was appropriate, requested the Commission on Youth investigate the feasibility and policy implications of such legislation.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christopher K. Peace".

Christopher K. Peace

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

From the Virginia House of Delegates

Christopher K. Peace, Chair
Mamye E. BaCote
Robert H. Brink
Peter F. Farrell
Beverly Sherwood
Anne Crockett-Stark

From the Senate of Virginia

Harry B. Blevins
Stephen H. Martin
One seat is vacant.

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2012 General Assembly Session, Delegate Toscano and Senators Barker and Favola each introduced legislation establishing a procedure to restore terminated parental rights. The Senate and House Courts of Justice Committees reviewed these bills and, determining that further study of the issue would be appropriate, requested the Commission on Youth study the issue. The Commission on Youth adopted a study plan to study the feasibility of creating a procedure for the restoration of terminated parental rights and the policy implications of such a procedure.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

Delegate Christopher K. Peace, Mechanicsville, Chair
Delegate Mamyé E. BaCote, Newport News
Delegate Robert H. Brink, Arlington
Delegate Peter F. Farrell, Richmond
Delegate Beverly J. Sherwood, Winchester
Delegate Anne B. Crockett-Stark, Wytheville
Senator Harry B. Blevins, Chesapeake, Vice Chair
Senator Stephen H. Martin, Chesterfield
The Honorable Gary L. Close, Esq., Culpeper
Frank S. Royal, Jr., M.D., Richmond
Charles H. Slemper, III, Esq., Norton
One Senate seat is vacant.

III. Executive Summary

Foster care is intended to be a temporary safety net for children who are abused or neglected. Ideally, children exit foster care by reunifying with a birth parent, living with a guardian, or being adopted. However, the child welfare system does not locate a family for every child. In 2010, 25.5 percent of children exiting the Virginia foster care system did so by "aging out,"¹ meaning they were emancipated from foster care at the age of 18 or older without a safe and permanent placement.

¹ *Virginia: Foster Care Facts*. FosteringConnections.org. [Online]. Available: <http://www.fosteringconnections.org/resources/facts?id=0046>. [Last visited January 2013].

Youth who age out of foster care face particularly difficult odds. They lack the moral and financial support of parents and relatives. Studies show they are at an increased risk for homelessness, involvement in the criminal justice system, and a lifetime dependence on public assistance. There are also increased rates of high school dropouts, alcohol and substance abuse, and unwanted pregnancies.

Some of the youth aging out of foster care were in the foster care system as a result of their parents having had their parental rights terminated by the court. In these cases, the court has intervened in the family and severed the familial connection. These children are then legal orphans, waiting in foster care for a permanent placement. In 2011, the Virginia Department of Social Services reported that eighteen youth aged out of foster care following the termination of their parents' parental rights. Restoration of parental rights would provide the courts with a tool to reunite these youth with their parents in those situations where the court and the local department of social services find it is safe and in the best interests of the youth.

At the Commission's meeting on May 14, 2012, the Commission on Youth adopted a study plan to study the feasibility of creating a procedure for the restoration of parental rights and to further study the policy implications of such a procedure. The study plan included convening an advisory group to assist in the effort. Findings and recommendations were to be reported to the Commission prior to the 2013 General Assembly Session.

At its December 3, 2012 meeting, the Commission on Youth approved a recommendation to amend the *Code of Virginia* by adding a section number 16.1-283.2 to provide a procedure for the restoration of previously terminated parental rights, with the following conditions:

- Age of Juvenile: 14 years of age
- Exceptions to Age Requirement
 - Younger Sibling Exception
The juvenile must be a certain age, or a younger sibling of a juvenile of sufficient age for whom restoration is being sought, and the younger sibling independently meets the criteria for restoration; and
 - Local Departments of Social Services (LDSS) and Guardian ad Litem (GAL) File Jointly
A restoration petition may be filed for a juvenile who does not meet the age requirement where his or her guardian ad litem and the local department of social services jointly file the petition for restoration.
- Who May File: the local departments of social services (LDSS) or the juvenile's guardian ad litem
- Required Time Period Post-Termination: Two years
- Time Period Exception:
 - 18th Birthday Exception
Where the required two year time period would expire after the juvenile's 18th birthday, the petition may be brought sooner.
- Who Must Consent: the juvenile and the parent whose rights are being restored
- Use a *best interests* standard with a *clear and convincing* burden of proof.
- Allow for the participation of a court-appointed special advocate (CASA) and include a CASA volunteer in the list of people who receive notice and reports
- Limit the availability of the restoration procedure for those cases in which a parent's parental rights were terminated pursuant to §16.1-283(B), (C), or (D).
- Provide for a transitional period, during which the juvenile is in the physical custody of the parent and the legal custody of the local department of social services.

IV. Study Goals and Objectives

At its meeting on May 14, 2012, the Commission on Youth adopted a study plan to examine the feasibility of creating a procedure for the restoration of parental rights for parents whose rights to their child/children were previously terminated and to further study the policy implications of such a procedure. The study originated from legislation introduced in the 2012 General Assembly Session by Delegate David Toscano and Senators George Barker and Barbara Favola. Commission staff was directed to report study findings and recommendations to the Commission prior to the 2013 General Assembly Session.

A. ISSUES

Foster care is intended to be a temporary safety net for children who are abused and neglected. Ideally, these children exit foster care by reunifying with a birth parent, living with a guardian, or being adopted. Unfortunately, the child welfare system does not locate a family for every child. In 2010, 25.5 percent of children exiting the foster care system in Virginia did so by “aging out,” meaning they were emancipated from foster care at age 18 without a safe and permanent family. Virginia ranks first among the states with the highest percentage of children aging out of foster care without a permanent placement.

Older youth aging out of foster care was an identified issue in this study. When youth age out of foster care, they lack the moral and financial support of parents, relatives, and other supportive adults. They face especially difficult odds as they transition to adulthood, at an increased risk for homelessness, exposure to or involvement with the criminal justice system, substance and alcohol abuse, unplanned pregnancies, and a lifetime reliance on public assistance.

Some of these children are legal orphans, a result of court-ordered termination of their parents’ parental rights. Their connection to their parents and family are severed by the court and they do not find a permanent placement. They languish in foster care before aging out. The Virginia Department of Social Services reported that, in 2011, eighteen youth aged out of foster care following the termination of their parents’ parental rights. While this number may seem small, the consequences for those youth are not insignificant. They face the same challenging prospects as other youth aging out of foster care, with no connection, legal or otherwise, to parents or relatives.

B. STUDY ACTIVITIES

The study plan approved by the Commission on Youth on May 14, 2012 included the following activities:

- Convene Advisory Group to assist in study effort.
 - Invite representatives from impacted groups, including:
 - Virginia Department of Social Services
 - Local Departments of Social Services
 - Virginia League of Social Service Executives
 - Special Advisor to the Governor on Virginia’s Children’s Services System
 - Virginia Department for Aging and Rehabilitative Services
 - Juvenile Court Judges
 - Virginia Supreme Court
 - Office of Comprehensive Services
 - State Executive Council (SEC)
 - State and Local Advisory Team (SLAT)
 - Local Comprehensive Services Act Coordinators
 - Family Assessment and Planning Teams (FAPT)
 - Advocacy Organizations
 - Parent Representatives
 - Private Child Placing Agencies

County and City Attorneys
CASA Representatives
Guardians ad Litem

- Review federal legislation and statutes.
 - *The Fostering Connections to Success and Increasing Adoptions Act* (P.L. 110-351)
 - Titles IV-B and IV-E of the Social Security Act
 - Temporary Assistance for Needy Families (TANF) block grant
 - *The Adoption and Safe Families Acts of 1997*
- Review Virginia laws, regulations, and terminology.
 - Foster care and adoption statutes
 - Child welfare regulations
 - Other related practices
- Analyze Virginia practices and data.
 - Review state and local Department of Social Services' (LDSS) policies and practices.
 - Review Virginia's custody assistance guidance documents.
- Analyze other states' practices and procedures.
 - National Conference of State Legislatures (NCSL)
 - State Policy Database from Casey Family Programs
 - Child Welfare League of America literature
- Develop recommendations.
 - Synthesize findings.
 - Develop recommendations.
- Solicit feedback to recommendations.
- Refine findings and recommendations.
- Present findings and recommendations to the Commission on Youth.
- Prepare final report.

V. Methodology and Objectives

The findings of the study are based on several distinct research activities.

A. RESEARCH AND ANALYSIS

Because restoration of parental rights is a fairly recent legislative movement, Commission on Youth staff had limited sources of information. Staff first analyzed the sections of the *Code of Virginia* relating to the termination of parental rights. This research was necessary in order to understand the context of the restoration issue. The Virginia Department of Social Services provided data on the number of youth aging out of foster care following the termination of their parents' parental rights to provide more context to the issue. Staff also read articles on the theories and policies behind restoration laws. Finally, staff analyzed and compared the restoration laws currently in place in ten states.

B. ADVISORY GROUP

The Commission established an Advisory Group in order to help identify, refine and prioritize issues of the study. Members of the Advisory Group met to discuss the legislation introduced at the 2012 General Assembly Session and to voice specific concerns and support for legislation, in addition to proposing specific recommendations for the consideration of the Commission.

The Advisory Group established by the Commission included representatives from the following agencies and organizations:

- Catholic Charities of Eastern Virginia
- Commission on Youth
- Comprehensive Services Act Coordinators
- CASA
- FACES of Virginia Families
- Family Foundation
- General Assembly
- Guardians ad litem
- Juvenile and Domestic Relations Court Judges
- Local Departments of Social Services
- Office of Comprehensive Services
- Special Advisor to the Governor
- Supreme Court of Virginia
- United Methodist Family Services
- Virginia Department of Aging
- Virginia Department of Social Services
- Virginia Poverty Law Center
- Voices for Virginia’s Children

A complete list of the Advisory Group membership is provided as Appendix A.

The Advisory Group met twice in 2012: August 20 and September 17. Minutes for Advisory Group meetings are provided as Appendix B.

At the August 20 meeting of the Advisory Group, Delegate David Toscano and Senator George Barker presented information on the legislation they had introduced in the 2012 General Assembly Session. Both pieces of legislation included a best interest standard for the child and required a clear and convincing burden of proof. However, there were two key differences. HB 450 (Toscano) required the child’s consent to the restoration, in addition to the consent of the parent, while the two Senate bills required only the child’s consent. The other difference in the legislation related to who could file the petition; HB 450 permitted either the local department of social services or the child’s guardian ad litem to file, while the two Senate bills allowed for the petition to be filed by the local department of social services or the child’s guardian ad litem jointly with the child’s parents. These differences are provided in the table which follows, which was included in a handout given to the Advisory Group.

Bill	HB 450	SB 218/SB 555
HB 450	<i>The petition to restore a parent's rights may be filed by the local board of social services or the child's guardian ad litem.</i>	<i>The petition to restore a parent's rights may be filed by the local board of social services or the child's guardian ad litem jointly with the child's parent.</i>
SB 218/ SB 555	<i>Both the child and the parent whose rights are to be reinstated consent to the restoration.</i>	<i>The child consents to the restoration of the parental rights.</i>

At this meeting, the Advisory Group also reviewed the restoration laws currently in place in ten states. (A state-by-state comparison chart is provided as Appendix C.) While these laws varied greatly in detail, the same general provisions were present in most. The Advisory Group discussed

the merits of a restoration process, with members giving their different perspectives, and the overall response of the Advisory Group was supportive of the concept of restoration of parental rights.

The Advisory Group considered the difficulty older youth in foster care confront in finding a safe and permanent home. In 2010, 25.5 percent of youth exiting the foster care system in Virginia did so by aging out. These juveniles confront particularly grim odds as they face a future without the emotional or financial support of parents or family. In some cases, the lack of familial connection for these juveniles is a result of court intervention. On occasion, the court system has intervened with the family unit and decided it was in the child's best interests for his or her parent to have parental rights terminated. When this happens, youth remain in foster care as legal orphans, waiting for a permanent placement or emancipation at the age of 18.

At its September 17 meeting, the Advisory Group discussed policy options for potential legislation. These policy options were based on research of other states' restoration laws, the 2012 legislation, and concerns voiced at the August 20 meeting. The Advisory Group considered both the condition of older youth aging out of foster care and the role of court-ordered termination of parental rights may play. The consensus of the Advisory Group was that legislation establishing a process for restoring the terminated parental rights would be useful option for the courts and child welfare system in their search for a permanent placement for a child. The paramount concern of the Advisory Group was that the legislation's overarching purpose be the furtherance of the best interests of the child. Members of the Advisory Group felt strongly that such legislation needed to be crafted carefully and thoughtfully to remain as tight in scope as possible, while still being a useful tool for courts and the child welfare system. This is reflected in the conditions included in the recommendation adopted by the Commission on Youth.

The Advisory Group considered policy options for an age threshold; age exceptions; who may file the petition; who must consent to the restoration; the required time period following termination; and required reports during the process. A handout of the policy options received by the Advisory Group is provided as Appendix D. The Advisory Group reached consensus at its September 17 meeting on these key provisions, which were subsequently recommended to the Commission on Youth at the October 17 meeting.

VI. Background

This section summarizes the results of the research and analysis conducted by Commission staff.

A. TERMINATION OF PARENTAL RIGHTS

Staff first reviewed the sections of the *Code of Virginia* relating to the termination of parental rights. An understanding of the termination procedure was necessary in order to provide context for this study.

Section 16.1-283 of the *Code of Virginia* provides that the juvenile and domestic relations court may terminate a parent's parental rights under certain circumstances. The actual language of this section may be found in Appendix E, and a summary of the section is provided in Appendix F.

Section 16.1-283(B) permits termination where the juvenile is found to be abused or neglected, is placed in foster care, and it is not reasonably likely that the conditions can be substantially corrected or eliminated within a reasonable period of time. Proof of the parent's severe mental or emotional illness or intellectual disability; habitual abuse or addiction to drugs or alcohol; or failure to respond to rehabilitative efforts constitutes prima facie evidence of the conditions of this section.

Termination is also permitted under section 16.1-283(C) in cases where the parent, without good cause, either has failed to maintain continuing contact with the juvenile in foster care, for a period of six months, or has been unable or unwilling to remedy substantially the conditions which led to the juvenile's foster care placement within a period of twelve months.

Section 16.1-283(D) allows for termination where the juvenile was abandoned under circumstances that either the identity or the whereabouts of the parent cannot be determined, and the juvenile's other parent or relative has not come forward to identify or claim a relationship with the juvenile.

Section 16.1-283(E) provides for termination in extreme cases, including but not limited to cases in which the parent has subjected the juvenile to torture, chronic or severe abuse, chronic or severe sexual abuse, or the parent has failed to protect the child from such abuse.

Termination is a procedure with great legal consequence. In a termination case, the court is intervening in the family and severing that familial relationship. The effect is a juvenile who is now a legal orphan, left in the care and custody of the child welfare system. While this is intended to be a temporary safety net before exiting to a permanent placement, some of these juveniles never achieve permanency.

B. OLDER YOUTH IN FOSTER CARE

In 2010, 25.5 percent of juveniles exiting the child welfare system in Virginia did so by aging out. "Aging out" refers to a juvenile's emancipation from foster care at the age of eighteen or older, without a safe and permanent placement. Virginia ranks first among the states in the percent of juveniles aging out of foster care without a permanent placement.

When juveniles age out of foster care, they face difficult odds in their transition to adulthood. Without the moral and financial support of parents and relatives, these juveniles are at risk for homelessness, substance and alcohol abuse, exposure to or involvement in the criminal justice system, unwanted pregnancies, and a lifetime reliance on public assistance.

The Virginia Department of Social Services reported that in 2011, eighteen juveniles aged out of foster care following the termination of their parents' parental rights. This relatively low number belies its significance. For these juveniles, the court has intervened into their families and severed their familial connection. If unable to achieve their permanency goals, they ultimately leave the custody of the state with no connection, legal or otherwise, to parents or relatives.

C. EXISTING RESTORATION LAWS IN OTHER STATES

A recent legislative movement seeks to address those cases of legal orphans aging out of foster care by providing a restoration procedure for appropriate cases. California was the first state to enact a restoration law, in 2005. Nine states have followed: Hawaii, Illinois, Louisiana, Maine, Nevada, New York, North Carolina, Oklahoma, and Washington. Staff researched and analyzed these state laws, comparing and contrasting key provisions. A chart comparing these state laws is provided in Appendix C.

As to who can file a petition, the states' statutes vary; California, Washington, and Oklahoma permit only the juvenile to file, while Maine and Illinois allow only the department of social services to file. The other states permit a combination of juvenile and department to file. Interestingly, New York permits the parent to file the petition for restoration; it is the only state to do so.

Most states have an age threshold in place in the restoration law, ranging from twelve to fifteen. California, Maine, and Nevada do not have an age threshold but requires the juvenile's consent if

he or she is over a certain age. Additionally, Illinois has an exception to the age threshold for cases in which the juvenile is the younger sibling of another juvenile for whom parental rights are being restored. North Carolina and Washington have exceptions for “good cause” or where “exceptional circumstances” exist.

Hawaii, Maine, and New York require the juvenile’s consent to the restoration of his or her parent’s parental rights. California and Nevada require the juvenile’s consent if he or she is over a certain age. Parental consent is required in the restoration laws of Hawaii, Illinois, Louisiana, Maine, and Nevada. New York requires the consent of the agency with the guardianship and custody of the juvenile. North Carolina, Oklahoma, and Washington do not address the consent issue.

Most states require a certain period of time to have passed between the original termination order and the filing of the restoration petition. This period of time allows for the possibility of the juvenile achieving his or her permanency goals. This period of time ranges from one to three years. However, Louisiana and Nevada do not have waiting periods.

New York’s statute limits the availability of the restoration procedure to cases in which the original termination was based on one of three grounds. Specifically, where a parent abandoned the juvenile for the six months immediately prior to the filing of the termination petition; where the parent, by reason of mental illness or retardation, was presently and for the foreseeable future unable to provide proper and adequate care for the juvenile who had been in the care of an authorized agency for the period of one year prior to the filing of the termination petition; or where the child was found to be a permanently neglected child.

Six states provide some form of a conditional grant of restoration. Hawaii, Louisiana, New York, North Carolina, Oklahoma, and Washington have such a provision in their state laws. This conditional grant permits a temporary order of restoration and the juvenile returns to the custody of his or her parent, while the department of social services develops a permanency plan and provides appropriate reunification services. After a statutorily prescribed period of time, the court enters a final order of restoration of parental rights, if the trial period has been successful.

VII. Findings and Recommendations

At its October 17, 2012 meeting, the Commission on Youth received study findings and a recommendation for this study. The Commission on Youth met again on December 3, 2012, and voted to adopt the recommendation of the Advisory Group.

Findings

Foster care is intended to be a temporary safety net for children who are abused or neglected. Ideally, children exit foster care by reunifying with a birth parent, living with a guardian, or being adopted. Unfortunately, the child welfare system does not locate a family for every child. In 2010, 25.5 percent of children exiting the system did so by “aging out,” meaning they were emancipated from foster care at age eighteen or older without a safe and permanent family.

Virginia ranks first among the states in the percent of children who “age” out of foster care without a permanent placement. In 2011, the Virginia Department of Social Services reported that 18 youth aged out of foster care following the termination of their parents’ parental rights. When youth age out of foster care, they lack the moral and financial support of parents, relatives, and other supportive

adults. These children face especially difficult odds as they transition to adulthood, finding themselves at risk for homelessness, exposure to or involvement in the criminal justice system, and reliance on public assistance.

Recommendation

Amend the Code of Virginia by adding a section numbered 16.1-283.2, providing a procedure to restore the parental rights of a parent whose rights had been previously terminated, with the following conditions:

- Age of Juvenile: 14 years of age
- Exceptions to Age Requirement
 - Younger Sibling Exception

The juvenile must be a certain age, or a younger sibling of a juvenile of sufficient age for whom restoration is being sought, and the younger sibling independently meets the criteria for restoration; and
 - Local Department of Social Services (LDSS) and Guardian ad Litem (GAL) File Jointly

A restoration petition may be filed for a juvenile who does not meet the age requirement where his or her guardian ad litem and the local department of social services jointly file the petition for restoration.
- Who May File: the local departments of social services (LDSS) or the juvenile's guardian ad litem
- Required Time Period Post-Termination: Two years
- Time Period Exception:
 - 18th Birthday Exception

Where the required two year time period would expire after the juvenile's 18th birthday, the petition may be brought sooner.
- Who Must Consent: the juvenile and the parent whose rights are being restored
- Use a *best interests* standard with a *clear and convincing* burden of proof.
- Allow for the participation of a court-appointed special advocate (CASA) and include a CASA volunteer in the list of people who receive notice and reports
- Limit the availability of the restoration procedure for those cases in which a parent's parental rights were terminated pursuant to §16.1-283(B), (C), or (D).
- Provide for a transitional period, during which the juvenile is in the physical custody of the parent and the legal custody of the local department of social services.

VIII. Acknowledgments

The Virginia Commission on Youth extends special appreciation to the members of the Advisory Group.

Appendix A

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

ADVISORY GROUP MEMBERSHIP

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Appendix B

Virginia Commission on Youth Study of Restoration of Parental Rights ADVISORY GROUP MEETING MINUTES

AUGUST 20, 2012

5 East Conference Room
General Assembly Building
10:00 a.m.

Members Attending:

Delegates Mamyé BaCote and David Toscano, Senator George Barker, Karen Addison, Melanie Baker, Lisa Banks, Gary Close, Jessica Cochrane, Margaret Deglau, Victor Evans, Stacie Fisher, Shannon Hoehl, Lelia Baum Hopper, Jack Ledden, Christine Marra, Ellen Nau, Cate Newbanks, Frank Royal, Karen Reilly-Jones, Eric Reynolds, Shawn Rozier, Mattie Satterfield, Charles Slemp, Anne Westcott, Adalay Wilson, Carol Wilson, Mary Wilson, Therese Wolf, Amy Woolard

Participating Electronically:

Patty Bailey, Betty Wade Coyle, Kathy Dial

Staff Attending:

Amy M. Atkinson, Leah Hamaker, Meg Burruss

Guests:

Denise Gallop, Sarah Stanton, Robley Jones, Lyndell Lewis, Becky Bowers-Lanier, Carter Batey

Welcome and Introductions

Amy M. Atkinson, Executive Director

Ms. Atkinson welcomed the Advisory Group and asked the members and guests to introduce themselves. She briefed the members on the history of this study and noted the three bills introduced this past General Assembly Session that dealt with the restoration of parental rights. Because there was not sufficient time to investigate the policy implications of these bills, the House and Senate Courts of Justice Committees continued the legislation to the 2013 General Assembly Session and referred the bills to the Commission on Youth so the Commission could evaluate the policy implications of the bills.

Ms. Atkinson noted that one common theme reflected by the legislation is that children typically do best when they are cared for by family members. Additionally, the federal *Fostering Connections and Increasing Adoptions Act* promotes the goal of maintaining family connections.

This Advisory Group is a “roll up your sleeves” work group and is tasked with evaluating the legislation introduced in the 2012 General Assembly Session. Ms. Atkinson stated that this was the first meeting of the Advisory Group and informed members that the Advisory Group would meet again in September to formulate draft recommendations. Those recommendations would then be presented to the Commission on Youth for consideration and action prior to the 2013 General Assembly Session.

Ms. Atkinson then asked Delegate Toscano and Senator Barker to explain their respective pieces of legislation.

2012 Introduced Legislation

The Hon. David Toscano, Virginia House of Delegates

The Hon. George Barker, Senate of Virginia

Delegate Toscano, patron of HB 450 (2012), began by informing the Advisory Group that he practices in this area of law and frequently represents local departments of social services (LDSS) in court. The issue of restoration of terminated parental rights was brought to him by the Virginia Poverty Law Center as an option for youth in foster care. He stated that, while he anticipated that the option would rarely be used, it could be beneficial in some cases. He offered the example of a young parent having his or her parental rights terminated, but in time being able to remedy the mitigating problem. This legislation would provide a tool for these parents so they could have their parental rights restored. Currently, the only option available to these parents is filing an adoption petition. Delegate Toscano stated that the provisions in his legislation would provide protections for these youth and require agreement between the guardians ad litem and the LDSS. He also noted that his legislation did not allow parents to file the petition – a difference between his and Senator Barker’s legislation. He stated a preference for establishing that the petition to be filed by the LDSS.

Senator Barker, patron of SB 218 (2012) spoke next, informing the group of his background as a foster parent and past chair of the Fairfax County Board of Social Services. He noted that there were challenges to finding permanent placements for youth in foster care and thus a large number of youth ultimately age out of foster care. He identified the George Mason University study on the outcomes of youth aging out of foster care and stated that restoration of parental rights could be a reasonable mechanism to provide youth with permanency supports.

Questions

- Delegate BaCote asked why the age of 14 was chosen for the legislation.
 - *Christie Marra of the Virginia Poverty Law Center spoke of her experience at National Training the previous week. The opinion there was that age 12 might be appropriate for youth to seek restoration.*

Termination of Parental Rights

Therese Wolf, Program Manager, Virginia Department of Social Services

Ms. Wolf gave her presentation on the process of termination of parental rights in Virginia. She first briefly addressed the voluntary termination of parental rights before turning to the process for involuntary termination. Ms. Wolf went through the handout prepared by Commission on Youth staff, identifying the different bases for termination of parental rights.

Questions

- Delegate Bacote asked about the role fathers play in this process.
 - *More often than not, the mother is the head of the household. When a mother’s rights are being terminated, the local departments need to look for the father. Furthermore, a lot of effort is spent looking for family from the father’s side of the family. Not a lot of fathers are the sole custodian.*
 - *On a national level, a number of local departments of social services are not seeking fathers to care for children, although that number has been increasing in the last five years. Again, more consideration needs to be given to fathers and their sides of the family.*
 - *Judge Deglau, Henrico County Juvenile and Domestic Relations (JDR) District Court informed the Advisory Group that, in a termination proceeding, the greater issue is women not knowing whom the father is. In her court, she orders both parents to list every known relative, regardless of his or her preference.*

Comments

- Senator Barker told of a personal experience with a foster youth in which the father lived in Minnesota but was located and stepped forward to care for the youth.
- An Advisory Group member spoke of the need to do better with a diligent search of all relatives, including those on the father's side of the family.
- Jack Ledden of Virginia Department of Social Services told the group about their father registry and the use of Accurint software to help locate fathers. He indicated that he sees a philosophical shift towards strengthening families.

State-by-State Comparison of Existing Restoration Laws

Meg Burruss, COY Legal Intern

Ms. Atkinson stated that ten states have a process in place and introduced Ms. Burruss to review the states that have such a process. Ms. Burruss explained the use of "restoration" versus "reinstatement" in the state laws and on the handout but stated that she would be using "restoration." She covered the various provisions regarding who can file the petition, highlighting New York for being the only state that permits the parent to file. She pointed out the range of ages of the juveniles for whom restoration was permitted, highlighting age exceptions and the states that do not have an age threshold. Ms. Burruss also pointed out to the members the various waiting periods in the statutes and the consent requirements included in some of the laws. She highlighted New York's statute as the only one which specifically limits restoration to cases in which the parents' rights were terminated in one of three circumstances. (Delegate Toscano interjected that his proposed legislation had a similar provision.) Ms. Burruss concluded by directing members' attention to the several states which have conditional granting of restoration.

Questions

- A question was asked whether there was any data about outcomes in restoration cases.
- Senator Barker asked about data from the states with the conditional period.
- A question was asked about which services were provided.
- A question was asked whether the process had to end before the child turns 18.
- A member spoke about research he had done and that responses out of California and Nevada had been mostly positive. Negative comments pertained mainly to the sense that age thresholds were high.
- There was a question about what was in place to protect adoptions.
 - *There is no provision in any of the laws but this process is only available where there is not a preadoptive family. Ms. Stanton, staff attorney with the Division of Legislative Services, stated that the language, "identified and approved," in Senator Barker's proposed legislation could be changed to "located parent."*
- There was a question about child support enforcement.
- There was a question about situations in which the child is receiving Temporary Aid to Needy Families (TANF) benefits.

Perspectives

Judge Deglau opened, offering a judicial perspective. She agreed with requiring the petition to be filed by agency or guardian ad litem. She spoke of her experience with termination cases and the impact upon the children. She expressed concern that this process could raise the child's hopes if the parent is permitted to file the petition. Judge Deglau noted that she could see this being a good thing for young families, stating that it is possible for a parent to change.

In regards to the age threshold, Judge Deglau said that younger children have less of an ability to protect their interests or assert themselves but, at the same time, there are 12 year olds who have seen and experienced things many in the room have not so perhaps age 12 might be more appropriate than age 14. She was reluctant to lower the age to under 12 because of the impact it

could have on the child if they went home, only to have a repeated child protective services investigation and possible removal from the home. Senator Barker asked about states that have an exception for younger children, including children who are younger siblings.

Judge Hoehl with Hanover County JDR Court noted that her perspective was based on her role in presiding over many foster care petitions. Her concern with establishing a process for restoration was how it could impact the child's perception of permanency, particularly for older youth. If there is constant hope for the child that they can return home, this may impede their ability to move forward. Another concern was the Senate Bill allowing the child's parent to file with the guardian ad litem. This may conflict with the role of the guardian ad litem. Moreover, it could be a lengthy process assuming that the petition is filed in JDR District Court and time frames are established for appeal.

A member asked about why a two-year period after termination was required. Judge Deglau spoke about the need to get things right post-termination. Six months, she argued, would not be enough time for LDSS to work with the child and look for an appropriate adoption placement. She highlighted that the biggest risk was restoring the parental rights and then having the situation implode.

A question was asked about the quality of the psychological exams used in the juvenile and domestic relations courts. Judge Deglau answered that the quality varies by region but, in Henrico County, these assessments were very helpful. Another question was asked about how often these psychological assessments occur, whether they are point to point or a one-time process.

A member spoke of open adoption and the youth who want to be connected with their birth parents, regardless of what a court order specifies. The cases that are successful are those with informal open adoptions.

Mattie Satterfield, Norfolk Department of Social Services Director, gave an overview of LDSS and children in foster care. She spoke of these children's unflagging desire to know where their families were, despite positive relationships with foster parents. She advocates for restoration of parental rights primarily for the children's sake. Her observations have been that children will return to their parents, even when LDSS does not support it. Ms. Satterfield pointed out that when there are reunifications, aftercare services are provided to the families for six months.

One Advisory Group member spoke of how such a process underscores the work done for youth in foster care. It is widely known that when youth age out of foster care, they seek out their parents. Restoration of those parental rights would be a vehicle to allow for support in appropriate circumstances. Restoring the parental rights gives legitimacy to the relationship.

Judge Deglau spoke about how she initially disagreed with the idea of restoration but then realized that many of the youth who came before her run away from their placements at ages 16 and 17. They are reestablishing relationships with their birth parents on their own anyway. Judge Hoehl questioned whether the ruling would be in favor of these youths' returning to their parents and whether it was in the children's best interests.

Delegate Toscano pointed out that by the time a petition for restoration went to court, it should be a "slam dunk" because of the work done before filing. The petition would not be filed until the particular factors are addressed.

Another member expressed concern about how this could affect the services the youth are receiving while in foster care. Another member echoed this concern. There was a follow-up question about any designated tribes in Virginia. Senator Barker stated that where there are issues, they are identified so that all impacted parties could attempt to address them.

Delegate BaCote mentioned the problem with youth transitioning from foster care at age 18 and the difficulty of receiving independent living services should they change their mind after opting not to receive independent living services.

The overall response of the Advisory Group was support of the concept of restoration of parental rights legislation, with slight modifications.

Next Steps

Ms. Atkinson thanked the members for their assistance and suggestions. Commission on Youth staff will consider all the expressed concerns and discussion including the age of the child, inclusion of a sibling exception, and options as to whether the guardian ad litem or the LDSS would initiate the petition.

The next step is developing a proposed legislative draft for the Advisory Group. Ms. Atkinson informed the attendees that the Advisory Group would reconvene on Monday, September 17 at 10:00 a.m. to review the draft legislation. A legislative draft would be disseminated to the Advisory Group prior to the meeting via email.

The meeting adjourned at 11:53 a.m.

SEPTEMBER 17, 2012
5 East Conference Room
General Assembly Building
10:00 a.m.

Members Attending:

Senator George Barker, Melanie Baker, Lisa Banks, Gary Close, Jessica Cochrane, Margaret Deglau, Victor Evans, Stacie Fisher, Richard Garriott, Lelia Baum Hopper, Christine Marra, Melissa O'Neill, Lisa Peacock, Catherine Pemberton, Karen Reilly-Jones, Eric Reynolds, Shawn Rozier, Mattie Satterfield, Adalay Wilson, Carol Wilson, Therese Wolf, Amy Woolard

Participating Electronically:

Delegate David Toscano, Patty Bailey, Betty Wade Coyle

Staff Attending:

Amy M. Atkinson, Leah Hamaker, Meg Burruss

Guests:

Sarah Stanton, Presenter; Denise Gallop, Sarah Stanton, Becky Bowers-Lanier

Welcome and Introductions

Amy M. Atkinson, Executive Director

Review of Legislative Draft

Meg Burruss, Legal Intern

Sarah Stanton, Senior Attorney, Division of Legislative Services

Ms. Burruss presented two handouts to the Advisory Group, the first being a "menu" of policy options and the second being a legislative draft to act as a concept to work from. Ms. Stanton reviewed the

draft with the group, explaining that the primary changes were in Sections G, H, and I. Ms. Burruss then went over the policy options handout.

Discussion of Legislative Draft and Formulation of Options

Workgroup Discussion

The issue of limiting the availability of restoration to those cases in which a parent voluntarily entrusts his or her child with the local department of social services, rather than cases in which parental rights have been involuntary terminated, was discussed by the Advisory Group.

Richard Garriott argued that parents who voluntarily entrusted their child were more likely to have the “right attitude” and to have improved their circumstances. He asked why this sort of limitation was not considered. Ms. Burruss responded that the primary reason was that the original legislation patroned by Del. Toscano and Sen. Barker did not include such a limitation, nor did other states’ restoration laws. Del. Toscano discouraged the proposal of limiting restoration to cases of voluntary entrustment because of the artificial barrier it would create for parents whose rights were involuntarily terminated but have since gotten their lives together. Christie Marra echoed this, stating that every judge should be given every option to put these families back together when a parent has gotten things straight in his or her life.

The age threshold at which the restoration process becomes available was also discussed. Members debated the merits of a 12 years of age versus 14 years of age threshold.

Judge Maggie Deglau felt that the age threshold should be older than 12, due to her concerns regarding the maturity of the child at that age. Mattie Satterfield, on the other hand, argued that a 12 year old should be given the option to be included in this process and be allowed to have hope. Adalay Wilson agreed that 12 years of age was considerable, because the child will have probably been in foster care for several years at that point. However, many expressed a concern about consistency in the Code. Both Eric Reynolds and Lelia Hopper argued that a juvenile of the age of 14 years had the power to veto a termination. and to allow a juvenile age 12 to petition for restoration would be inconsistent. It was suggested that, rather than having a specific age threshold, it be required that a juvenile be of sufficient maturity. Judge Deglau expressed her concerns with this because it could possibly allow restoration for younger children, increasing the risk of a second termination. Again, members argued for consistency in the Code. Ultimately, the Advisory Group agreed on a 14 years of age threshold requirement.

During this discussion, the topic of exceptions to the age requirement came up. Referencing the policy handout, Ms. Burruss explained the various age exceptions in other states’ legislation. Ms. Marra suggested the younger sibling exception to which the group agreed. Sen. Barker suggested an exception to the age requirement where both the juvenile’s guardian ad litem and the local department of social services jointly file the petition for restoration. The group agreed to this as well.

The Advisory Group also discussed the appropriate period of time to be required post-termination. While everyone quickly settled on a two year requirement, Shawn Rozier posed a question about a situation in which the two year period would expire *after* a juvenile reached the age of 18. He suggested there be an exception to the two year period requirement for those cases. This was agreed to as well. Ms. Hopper pointed out there would then be a need for statutory language granting jurisdiction to the juvenile and domestic relations courts in these post-18th birthday cases.

Who should be permitted to file the petition for restoration was also discussed. Mr. Garriott expressed his concerns with only the local departments of social services being permitted to file. He thought an independent party, such as the juvenile’s guardian ad litem, needed to be involved in the process. Mr. Reynolds, on the other hand, questioned what the role of the guardian ad litem would

be in these cases, particularly where he or she does not agree with restoration. Mr. Garriott, a guardian ad litem, said that the guardian ad litem's role is to act in the juvenile's best interest, even where he or she did not like the idea of restoring the parental rights. The group settled on permitting the petition to be filed by the juvenile's guardian ad litem or the local department of social services.

Mr. Garriott asked whether parents would be appointed counsel in the restoration process. Judge Deglau responded that at the point of restoration, these parents were not technically parents. Therefore, in her opinion, they did not have a constitutional right to be appointed counsel. Ms. Hopper then asked whether Judge Deglau herself would appoint counsel to a parent in this case. Judge Deglau answered that she probably would not. The local department is filing the petition, essentially, on behalf of the parent. Additionally, courts hear *pro se* litigation in custody cases all the time. She did say that if the parent had a disability, then perhaps she would appoint counsel for him or her. Senator Barker asked about whether a parent would have a right to appointed counsel if the guardian ad litem filed the petition but the local department opposed. Judge Deglau said that in her opinion, no. Ms. Hopper asked about a situation in which the parental rights of both parents are being considered for restoration independently. Judge Deglau said that, for example, if the parents are divorced and one has retained his or her parental rights, while the other has had parental rights terminated, the remaining legal parent would be entitled to appointed counsel.

Ms. Burruss asked the group whose consent should be required by the legislation and the group overwhelmingly agreed both the juvenile and the parent must consent. She then asked about including a parental interference section, as Illinois does in its restoration law, but the group felt that was unnecessary. Judge Deglau said a judge would make that determination and dismiss in that case, with or without a provision. The group also did not support the inclusion of hearing exception. Judge Deglau said hearings should always be held in these cases.

Amy Woolard asked about the availability of services and benefits to the juveniles whose parents have their rights restored. She said that these youth have spent time in foster care, exposed to those things which may lead to negative outcomes, and are then dropped into their families without benefits or services. Ms. Stanton pointed to the draft legislation which provides for a trial period in Section G. During this trial period, the local department retains legal custody of the juvenile, which allows the juvenile to continue to receive services and benefits. Judge Deglau said that the language in Section G should be changed to be more consistent with Title IV-E language. Mr. Rozier echoed this, stating that the visitation requirement should be changed to every month.

Some time was spent discussing minor provisions to be changed or included in the legislation, which Ms. Atkinson pointed out could be better done by a work group. The group agreed and it was decided that another draft of legislation would be sent out electronically for the group to make further suggestions and changes.

Next Steps and Adjournment

Ms. Atkinson informed the Group that staff would present draft recommendations and policy options to the Commission on Youth at their October 17 meeting. There will be no public comment or vote at that time, however.

The Advisory Group adjourned at 12:00 noon.

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of California through Maine 8/20/12

STATE	WHO CAN FILE	JUVENILE: AGE	JUVENILE: OTHER FACTORS	PRIOR TERMINATION PROCEEDING	NOTIFICATION TO ELIGIBLE JUVENILE REQUIRED
CALIFORNIA	Juvenile	No age threshold but if the juvenile is 12 years of age or older, the juvenile must sign the petition for reinstatement.	Has not been adopted; Adoption is no longer the permanency plan.	Occurred at least three years prior to the filing of the petition for reinstatement	Not addressed in Code
HAWAII	Juvenile; Juvenile's guardian ad litem or attorney; Department	14 years of age or older	Been in permanent custody for at least 12 months		Not addressed in Code
ILLINOIS	Department of Children and Family Services	13 years of age or older <i>Younger sibling exception</i>	Has remained a ward of the Court; Not currently in a placement likely to achieve permanency	Occurred at least three years prior to the filing of the motion for reinstatement	Not addressed in Code
LOUISIANA	Counsel appointed for child; Department	At least 15 years of age	Currently in foster care	Not addressed in Code	Not addressed in Code
MAINE	Department	No age threshold but if juvenile is 12 years of age or older, the juvenile must consent to reinstatement	Has been in the custody of the department for at least 12 months following the termination order	Occurred at least 12 months prior to the filing of the petition for reinstatement	Not addressed in Code

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of California through Maine 8/20/12

STATE	CONSENT REQUIRED	BURDEN OF PROOF	PROCESS	CONDITIONAL GRANT
CALIFORNIA	Not addressed in Code	Clear and convincing evidence	<ul style="list-style-type: none"> ✓ Motion filed ✓ Hearing held <i>if it appears the best interests of the child may be promoted by reinstatement</i> 	Not provided in Code
HAWAII	Both parent and juvenile must consent	Clear and convincing evidence	<ul style="list-style-type: none"> ✓ Motion filed ✓ Department and child's guardian ad litem submit reports to the court with findings ✓ Preliminary hearing ✓ Final hearing 	At the preliminary hearing, the court may order a temporary reinstatement of parental rights. The juvenile is placed in the physical care of the parent for <i>no more than 6 months</i> . The department develops a permanency plan and appropriate transitional services are provided to the family. A final hearing is held on the motion after the juvenile has been with the parent for 6 months. If the trial placement has been successful, the court may issue a final order of reinstatement of parental rights.
ILLINOIS	Must be a finding that parent "wishes" to have parental rights reinstated	Clear and convincing evidence	Not addressed in Code	Not provided in Code
LOUISIANA	Court will not restore parental rights without the parent's consent		<ul style="list-style-type: none"> ✓ Motion filed ✓ Department submits report to court with findings ✓ Hearing – <i>stipulation exception</i> 	The court may restore parental rights, or it may decide either to allow contact between parent and juvenile under certain conditions or to place the juvenile in parent's custody with continuing Department supervision.
MAINE	Both parent and juvenile must consent	Clear and convincing evidence	Not addressed in Code	Not provided in Code

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of California through Maine 8/20/12

STATE	FACTORS CONSIDERED
CALIFORNIA	None specified.
HAWAII	<p><u>The department and the juvenile's guardian ad litem shall submit reports to the court that address:</u></p> <ul style="list-style-type: none"> ✓ The material changes in circumstances since the termination of parental rights ✓ The reasons parental rights were terminated and the date of the termination order ✓ A parent's willingness to resume contact with the juvenile and to have parental rights reinstated ✓ A juvenile's willingness to resume contact with the parent and to have parental rights reinstated ✓ A parent's willingness and ability to be involved in the juvenile's life and to accept physical custody of the juvenile ✓ Other relevant information <p><u>The court shall consider:</u></p> <ul style="list-style-type: none"> ✓ Whether a parent has remedied the conditions that caused the termination of parental rights ✓ The age and maturity of the juvenile and the juvenile's ability to express a preference ✓ The likelihood of risk to the health, safety, or welfare of the juvenile
ILLINOIS	<p><u>The court shall consider:</u></p> <ul style="list-style-type: none"> ✓ The reasons why the juvenile was initially brought to the attention of the court ✓ The history of the juvenile's case ✓ The current circumstances of the parent for whom reinstatement is sought
LOUISIANA	<p><u>The department shall submit a confidential report to the court with findings on the following:</u></p> <ul style="list-style-type: none"> ✓ The change in circumstances since the certification for adoption ✓ A summary of the reasons why parental rights were terminated and the date of the judgment ✓ The willingness of the parent to resume contact with the juvenile and have parental rights restored ✓ The willingness of the juvenile to resume contact with the parent and have parental rights restored ✓ The ability and willingness of the parent to be involved in the life of the juvenile and to accept the physical custody of the juvenile ✓ Other relevant information
MAINE	<p><u>The department's petition must include:</u></p> <ul style="list-style-type: none"> ✓ A summary of the reasons for the termination of parental rights ✓ A summary statement of the facts that the department believes to constitute a substantial change in circumstances of the parent demonstrating that the parent has the capacity and willingness to provide for the health and safety of the juvenile ✓ Statements of intent of the parent and of the juvenile to consent to reinstatement <p><u>The court shall consider:</u></p> <ul style="list-style-type: none"> ✓ The age and maturity of the juvenile ✓ The juvenile's ability to express a preference ✓ The juvenile's ability to integrate back into the home of the parent ✓ The ability of the parent to meet the juvenile's physical and emotional needs ✓ The extent that the parent has remedied the circumstances that resulted in the termination of parental rights ✓ The likelihood of future risk to the juvenile

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of Nevada through Washington 8/20/12

STATE	WHO CAN FILE	JUVENILE: AGE	JUVENILE: OTHER FACTORS	PRIOR TERMINATION PROCEEDING
NEVADA	Juvenile; Legal custodian or guardian for juvenile	No age threshold but if juvenile is 14 years of age or older, the juvenile must consent to reinstatement.	Has not been adopted	Not addressed in Code
NEW YORK	Juvenile's attorney; Agency or individual to whom guardianship & custody of juvenile has been committed; Respondent in TPR proceeding	At least 14 years of age	Remains under the jurisdiction of the family court; Has not been adopted; Does not have a permanency goal of adoption; Consents to reinstatement	Occurred at least two years prior to the filing of the petition for reinstatement Based on one of three grounds: ✓ Parent abandoned child for the 6 months immediately prior to the filing of TPR petition ✓ Parent was presently and for the foreseeable future unable by reason of mental illness or retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the filing of the TPR petition ✓ Child is a permanently neglected child
NORTH CAROLINA	Juvenile; Juvenile's guardian ad litem attorney; County department of social services	At least 12 years of age <i>Exceptional circumstances exception</i>	Does not have a legal parent; Is not in an adoptive placement; Is not likely to be adopted within a reasonable period of time	Occurred at least three years prior to the filing of the reinstatement motion
OKLAHOMA	Juvenile <i>Juvenile's attorney must sign the application for reinstatement</i>	15 years of age or older	Previously found to be a deprived child; Has not achieved permanency plan	Occurred at least three years prior to the filing of the application for reinstatement
WASHINGTON	Juvenile	12 years of age or older <i>Good cause exception</i>	Previously found to be a dependent child; Has not achieved or sustained permanency plan	Occurred at least three years prior to the filing of the petition for reinstatement

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of Nevada through Washington 8/20/12

STATE	CONSENT REQUIRED	BURDEN OF PROOF	PROCESS	CONDITIONAL GRANT
NEVADA	Parent must consent in writing. Juvenile must consent if over the age of 14.	Preponderance of the evidence	Not addressed in Code	Not provided in Code
NEW YORK	Juvenile must consent; the agency with guardianship and custody of the juvenile must consent.	Clear and convincing evidence	Not addressed in Code	Court may grant the petition conditionally for a period of time up to <u>6 months</u> . Guardianship and custody of juvenile remains with the local social services district while the juvenile visits with or is placed on a trial discharge with the parent. A reunification plan is developed and appropriate transitional services are provided. A proceeding is held at the end of the designated period to make a final disposition on the petition.
NORTH CAROLINA	Not addressed in Code	Not addressed in Code	<ul style="list-style-type: none"> ✓ Motion filed ✓ Preliminary hearing ✓ Motion dismissed <u>OR</u> Permanency plan ordered to become reinstatement 	If the court orders the permanency plan become reinstatement of parental rights, interim hearings are held <u>every 6 months</u> . A final decision to dismiss or grant the motion must be made <u>within 12 months</u> of the motion being filed.
OKLAHOMA	Not addressed in Code	At preliminary hearing – preponderance of the evidence At hearing on the merits – clear and convincing evidence	<ul style="list-style-type: none"> ✓ Motion filed ✓ Preliminary hearing ✓ Hearing on the merits ✓ Final hearing 	The court may conditionally grant the application for reinstatement at the hearing on the merits. The case is then continued for <u>6 months</u> and a temporary order of reinstatement is entered. Meanwhile, the juvenile is placed in the custody of the parent and the Department develops an appropriate permanency plan. At the end of this period, if the placement has been successful, the court shall enter a final order of reinstatement of parental rights.
WASHINGTON	Not addressed in Code	At threshold hearing – preponderance of the evidence At hearing on the merits – clear and convincing evidence	<ul style="list-style-type: none"> ✓ Petition filed ✓ Threshold hearing ✓ Hearing on the merits ✓ Final hearing 	The court may conditionally grant the petition for reinstatement at the hearing on the merits. The case is then continued for <u>6 months</u> and a temporary order of reinstatement is entered. Meanwhile, the juvenile is placed in the custody of the parent and the department develops a permanency plan and provides appropriate reunification services. After the juvenile has been placed with the parent for <u>6 months</u> , if the placement has been successful, the court shall enter a final order of reinstatement of parental rights.

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

STATE-BY-STATE COMPARISON OF EXISTING RESTORATION LAWS

States of Nevada through Washington 8/20/12

STATE	FACTORS CONSIDERED
NEVADA	None specified.
NEW YORK	None specified.
NORTH CAROLINA	<p><u>Court shall consider and make written findings regarding those that are relevant:</u></p> <ul style="list-style-type: none"> ✓ What efforts were made to achieve adoption or permanent guardianship ✓ Whether the parent has remedied the conditions that led to the juvenile's removal and the termination of his or her parental rights ✓ Whether the juvenile would receive proper care and supervision in a safe home if placed with the parent ✓ The age and maturity of the juvenile and the ability of the juvenile to express his or her preference ✓ The parent's willingness to resume contact with the juvenile and to have parental rights reinstated ✓ The juvenile's willingness to resume contact with the parent and to have parental rights reinstated ✓ Services that would be needed by the juvenile and the parent if parental rights are reinstated ✓ Any other criteria the court deems necessary
OKLAHOMA	<p><u>The court shall consider:</u></p> <ul style="list-style-type: none"> ✓ Whether the parent is a fit parent and has remedied the conditions as provided in the record of the prior termination proceedings and order ✓ The age and maturity of the juvenile, and the ability of the juvenile to express his or her preference ✓ Whether reinstatement will present a risk to the health, safety, or welfare of the juvenile ✓ Other material changes in circumstances, if any, that may have occurred which warrant the granting of the application
WASHINGTON	<p><u>The court shall consider:</u></p> <ul style="list-style-type: none"> ✓ Whether the parent is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and order ✓ The age and maturity of the juvenile and the ability of the juvenile to express his or her preference ✓ Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety ✓ Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

POLICY OPTIONS FOR 2013 LEGISLATION

September 17, 2012

Age of Juvenile

- **No age threshold**

California *(but if juvenile is 12 years of age or older, the juvenile must sign the restoration petition)*

Maine *(but if juvenile is 12 years of age or older, the juvenile must consent to the restoration)*

Nevada *(but if juvenile is 14 years of age or older, the juvenile must consent to the restoration)*

- **12 years of age** (North Carolina and Washington)
- **13 years of age** (Illinois)
- **14 years of age** (Hawaii and New York)
- **15 years of age** (Louisiana and Oklahoma)

Age Exceptions

- **Younger Sibling** (Illinois)

The child must be 13 years of age or older, OR the child is the younger sibling of a child 13 years of age or older for whom restoration is being sought and the younger sibling independently meets the criteria set forth in the subsection.

- **Good Cause** (Washington)

The child must be at least 12 years old at the time the petition is filed. Upon the child's motion for good cause shown, or on its own motion, the court may hear a petition filed by a child younger than 12 years old.

- **Extraordinary Circumstances** (North Carolina)

The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.

Who May File

- **Juvenile Only** (California, Oklahoma, Washington)

Oklahoma requires the juvenile's attorney to sign the application.

- **Department Only** (Illinois, Maine)

- **Parent** (New York – *in addition to the juvenile's attorney and the agency or individual with guardianship and custody of the juvenile*)

- **Legal Custodian or Guardian** (Nevada – *in addition to the juvenile*)

- All other states permit a combination of juvenile, juvenile's guardian ad litem or attorney, and the state child welfare agencies to file the petition for restoration of parental rights.

Consent Required

- **Both Juvenile and Parent Must Consent** (Hawaii, Maine and Nevada)
Nevada requires the juvenile's consent if 14 years of age or older.
- **Parent Must Consent** (Louisiana and Illinois)
Illinois requires a finding that parent "wishes" to have parental rights restored.
- **Juvenile Must Consent** (California)
The juvenile must consent if 12 years of age or older
- **All Parties to the Proceeding** (New York)

Required Time Period Post-Termination

This is the amount of time that must pass before a petition may be brought to restore previously terminated parental rights.

One Year Maine	Two Years New York	Three Years California Illinois North Carolina Oklahoma Washington
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Parental Interference

Illinois' statute allows any party to file a motion to dismiss the petition to reinstate parental rights on the basis that the parent *acted intentionally to prevent the child from being adopted* or *acted intentionally to disrupt the child's adoption* after parental rights were terminated. If the court finds by a preponderance of the evidence that the parent did so, the court shall dismiss the petition with prejudice.

Pre-Hearing Reports

- Louisiana requires its child welfare agency submit a confidential report to the court with findings on specified issues, including the change in circumstances since the certification for adoption and the parent's ability and willingness to be involved in the life of the juvenile and to accept the physical custody of the juvenile.
- Hawaii requires its child welfare agency to submit a similar report, done collaboratively with the juvenile's guardian ad litem.

Hearing Exception

Louisiana permits the court to enter a judgment restoring parental rights, without a hearing, *if* the department of children and family services, the juvenile's counsel, the CASA volunteer working with the juvenile, and the juvenile's parent all stipulate that restoration is in the best interest of the child.

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

CODE OF VIRGINIA § 16.1-283

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual, subject to the provisions of subsection A1. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds,

based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and
2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2:

- a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;
- b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or
- c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or
2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and
2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and
3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child 14 years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

(1977, c. 559; 1978, c. 340; 1979, c. 281; 1980, c. 295; 1985, c. 584; 1987, c. 6; 1988, c. 791; 1998, c. 550; 1999, c. 889; 2000, c. 385; 2002, cc. 664, 729; 2012, cc. 476, 507.)

**Virginia Commission on Youth
Study of Restoration of Parental Rights**

SUMMARY OF CODE OF VIRGINIA § 16.1-283

Termination of Parental Rights

- Petition specifically requesting TPR – petition shall not be accepted by the court prior to the filing of a foster care plan which documents termination as being in the child’s best interests
- Petition may be heard and adjudicated in the same proceeding in which the court approves the foster care plan documenting termination as being in the child’s best interests
- Local board of social services or licensed child-placing agency need not have identified an available and eligible family to adopt the child prior to the order terminating the parental rights
- An order terminating residual parental rights must be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency, or the granting of custody or guardianship to a relative or other interested individual
 - The court shall give a consideration to granting custody to relatives of the child, including grandparents
- Summons shall be served upon the parent or parents
- Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child – notice shall inform those parties that they may appear as witnesses to give testimony and otherwise participate in the proceeding

The court may terminate a parent’s parental rights under any of the following circumstances:

- The parent has abandoned the child.
- The parent is unable to discharge his or her parental duties due to:
 - Emotional illness, mental illness, or mental deficiency
 - Habitual abuse or addiction to intoxicating liquors, narcotics, or other dangerous drugs
- The parent has subjected the child to aggravated circumstances, including, but not limited to, torture, chronic or severe abuse, or chronic or severe sexual abuse. It includes the failure to protect the child from such conduct.
- Reasonable efforts to rehabilitate the parent have failed.
- The parent has been convicted of:
 - Murder or voluntary manslaughter of a child of the parent, a child with whom the parent resided, or the other parent of the child
 - Felony attempt, conspiracy, or solicitation to commit any such offense
 - A felony assault that results in serious bodily injury, felony bodily wounding, or felony sexual assault, and the victim was a child of the parent or a child residing with the parent
- The parent has failed to maintain continuing contact with the child for 6 months after the child has been placed in foster care.
- Parental rights to another child of the parent have been involuntarily terminated.

Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he or she is age 14 or older or otherwise of an age of discretion as determined by the court, objects to such termination.