

New England Convening on Youth Permanence: From Planning to Action

Westford, Massachusetts

November 30-December 1, 2010

Policy Roundtable: Reinstatement of Parental Rights

Summary of Discussion

This roundtable concerned new laws in a growing number of states that allow courts to reinstate a parent's rights to a youth in foster care, based on a change in circumstances and when efforts to finalize an adoption by a third party have been unsuccessful.

In some states, a statute authorizing reinstatement may not be necessary because other avenues are available for youth and their birth parents, for example, adoption or guardianship. Even these states may want to consider a reinstatement option, for the following reasons. Although the end result of adoption and reinstatement is the same, reinstatement may feel less "artificial" to birth parents and youth than adoption. Guardianship, which ends when the youth turns age 18, is seen by some as less permanent than full parental rights. Of course, in states that do not allow a birth parent who has lost parental rights to adopt or assume guardianship, a reinstatement option may be the only legal means of re-establishing the parent-child relationship.

Social workers are seeing many youth reuniting with their parents "under the radar" after discharge from foster care. One state reviewed cases of youth who had aged out of care and found that approximately 80 percent had returned to biological family. Unfortunately, there appear to be no data on how often cases are being filed under the current set of reinstatement statutes, nor do we know the outcome of those cases. There is a desire to help such families before discharge prepare for eventual reunification. Findings of maltreatment that lead to termination of parental rights are based on circumstances and conditions that existed at a point in time and that can (and do) change. The notion that families can change is fundamental to child welfare practice, and allowing for reinstatement of parental rights seems in line with that philosophy.

It could be that the problem of "legal orphans" that reinstatement statutes seek to address may become less severe as practice improves, obviating the need for these laws. However, the system still terminates fathers' rights without adequately engaging them in the dependency process. Thus, these laws may be the only recourse for fathers who are seeking to provide a permanent family for youth in care.

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Maine plans to introduce reinstatement legislation in the 2011 session. The bill will be based on Hawaii's statute. Planning for the bill has involved addressing the key questions of who can file a petition for reinstatement (the Department or the youth's GAL), the standards for demonstrating a change in circumstances, and the party responsible for demonstrating such change (the parent). Other considerations are that the youth must agree to reinstatement, no other permanency options are appropriate, and the requirement of a trial home visit of up to 6 months prior to a final order of reinstatement. Reinstatement of a biological parent's rights may also be available when an adoption dissolves and the youth re-enters foster care. A reinstatement order does not in any way reverse or affect the validity of the original TPR decree, but merely acknowledges that circumstances have changed. Maine is currently working on defining the standards for determining a change in circumstances and is working concurrently on a policy related to substantiations and the expungement of findings from the registry when a parent can prove he or she is no longer a threat to children.

Reactions to the discussion of Maine's policy proposal included the following:

- New Hampshire mentioned that findings of maltreatment can be a barrier to families consenting to services, so they are exploring the idea of vacating findings upon a successful reunification after consent to services.
- In setting standards for determining the required degree of change before reinstatement can be ordered, are we "raising the bar" to a standard that is harder to achieve than the standard for the initial removal?
- How handle situations in which a relative adoptive parent is no longer able to manage due to age and/or illness and the birth parent is now seen as a placement resource?