

RE-INSTATEMENT OF PARENTAL RIGHTS

3/13/15

Reinstatement restores the legal rights of the parent and child, including all rights, powers, privileges, immunities, duties, and obligations that were terminated by the court in a termination of parental rights order. It is not a modification or vacation of an order under 33 VSA § 5113.

Title 33 § 512__ RE-INSTATEMENT OF PARENTAL RIGHTS

(a) A petition for reinstatement of parental rights may be filed by the Department for Children and Families on behalf of a child in the custody of DCF under the following conditions:

- (1) the child's adoption from the child welfare system has been dissolved; or
- (2) the child has not been adopted after at least three years from the date of the court order terminating parental rights.

The child, if age 14 or older, may also file a petition to reinstate parental rights, if the adoption has been dissolved, or if parental rights have been terminated and the child has not been adopted after three years. This section shall not apply to children who have been placed under permanent guardianship pursuant to 14 V.S.A. §2664.

(b) DCF shall file an updated permanency plan with the petition for reinstatement. The updated plan shall address the material change in circumstances since the termination of parental rights, the Department's efforts to achieve permanency, the reasons for the parent's and child's desire to have rights reinstated, and parent's present ability and willingness to resume or assume parental duties.

(c) Hearing. The court shall hold a hearing to consider whether reinstatement is in the child's best interest. The court shall conditionally grant the petition if it finds by clear and convincing evidence that:

- 1) the parent is presently willing and has the ability to provide for the child's present and future safety, care, protection, education, and healthy mental, physical, and social development; and
- 2) reinstatement is the child's express preference; and
- 3) if the child is 14 years or older and has filed the petition, that the child is of sufficient maturity to understand the nature of this decision; and
- (4) the child has not been adopted, or the adoption has been dissolved; and
- (5) the child is not likely to be adopted¹; and
- (6) the child is not the subject of a written adoption agreement between the Department and a prospective adoptive parent, and
- (7) reinstatement of parental rights is in the best interests of the child.

Upon a finding by clear and convincing evidence that all conditions set forth in subsection (d) exist and that reinstatement of parental rights is in the child's best interest, the court shall issue

¹ *Instead of "child is not likely to be adopted,"* how about "if the child is not placed in a legal risk home?"

a conditional custody order for up to six months transferring temporary legal custody of the child to the parent, subject to conditions as the court may deem necessary and sufficient to ensure the child's safety and well-being. The court may order the Department to provide transition services to the family as appropriate. If during this time period, the child must be removed from the parent's temporary conditional custody due to allegations of abuse or neglect, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(d) After the child is placed with the parent for up to six months pursuant to subsection (c), the court shall hold a hearing to determine if the placement has been successful. The court shall enter a final order of reinstatement of parental rights upon a finding by preponderance of the evidence that placement continues to be in the child's best interest.

(e) Effect of Reinstatement. Reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights. It restores a parent's legal rights to his or her child, including all rights, powers, privileges, immunities, duties, and obligations that were terminated by the court in the termination of parental rights order. Such reinstatement shall be a recognition that the parent's and child's situation have changed since the time of the termination of parental rights, and reunification is appropriate. An order reinstating the legal parent and child relationship as to one parent of the child has no effect on the legal rights of any other parent whose rights to the child have been terminated by the court; or the legal sibling relationship between the child and any other children of the parent. A parent whose rights are reinstated pursuant to this section is not liable for child support owed to the Department during the period from TPR to reinstatement. The Department and its employees are not liable for civil damages resulting from any act or omission in providing services under this section unless the act or omission constitutes gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists.