



**Reinstatement of Parental Rights Study  
Findings & Recommendations**

# Reinstatement of Parental Rights Study Charter

## SECTION 20. STUDY – REPORT TO LEGISLATIVE MANAGEMENT – REINSTATEMENT OF PARENTAL RIGHTS.

- ✓ During the 2023-24 interim, the department, with assistance from other stakeholders including the North Dakota supreme court, human service zone directors, and the North Dakota association of counties, to review the option of reinstating parental rights that have been terminated by a court. Before August 1, 2024, the department shall report progress to the legislative management.

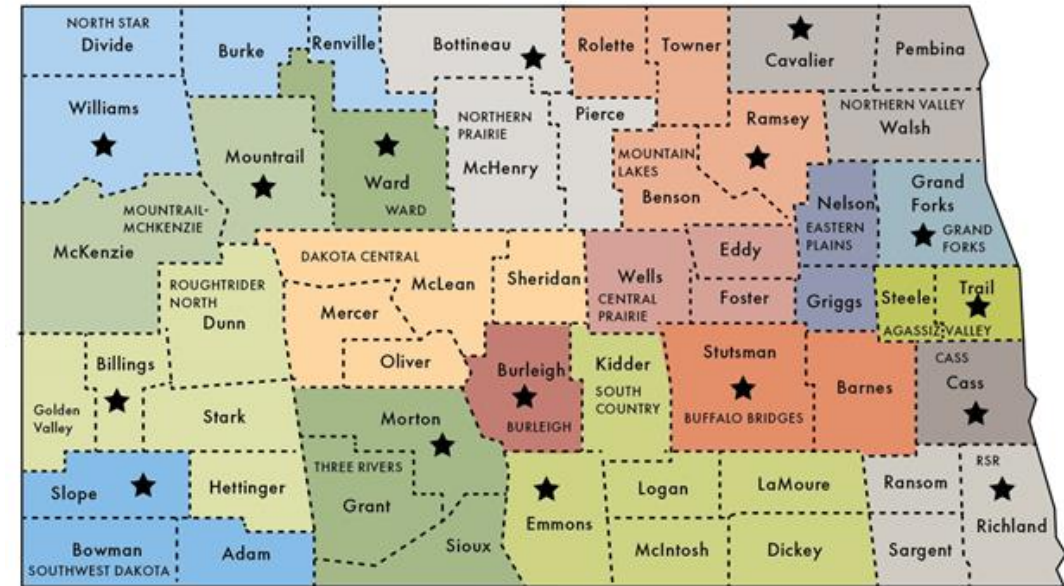


# Reinstatement of Parental Rights Study

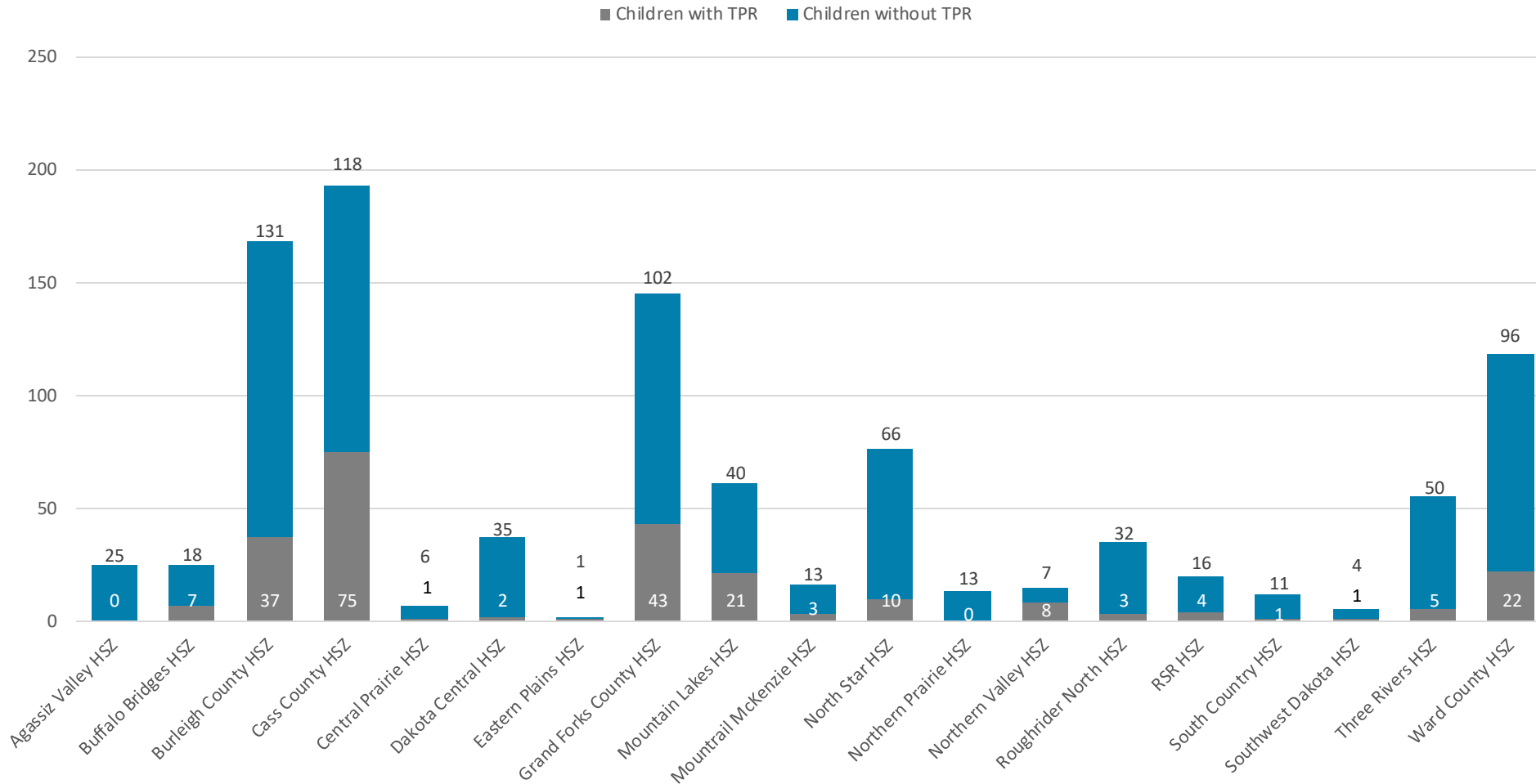
## Committee Meetings & Members

Met twice per month for three months (6 meetings)

- Judge Jay Knudson, District Court Judge, Northeast Central Judicial District
- Heather Traynor, Court Improvement Program
- Travis Finck, Indigent Defense
- Karen Kringle, Director, Unit 2, Juvenile Court
- Ashley Leis, Executive Director, States Attorney Association
- Aaron Webb, Legal Advisory Unit, HHS
- Rebecca Jund, Cass County States Attorney
- Lisa Piche/ Leah Honeyman, FSS Supervisor, CFS/HHS
- Rhonda Allery, Director, Mountain Lakes HSZ
- Chelsea Flory, Director, Burleigh County HSZ
- Kristen Hasbargen, Director of Zone Operations, HHS
- Cory Pedersen, Director, CFS/HHS
- Dean Sturn, Permanency Administrator, CFS/HHS, Co-Facilitator
- Julie Hoffman, Adoptions Administrator, CFS/HHS, Co-Facilitator



# Termination of parental rights cases = 24% of children in Human Service Zone custody



Of the **1,028** kids in foster care on May 31, 2024, 244 (24%) had no legal connection to their biological parents due to Termination of Parental Rights (TPR).

Note: Data excludes children in Tribal or DJS custody

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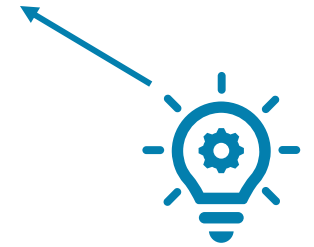
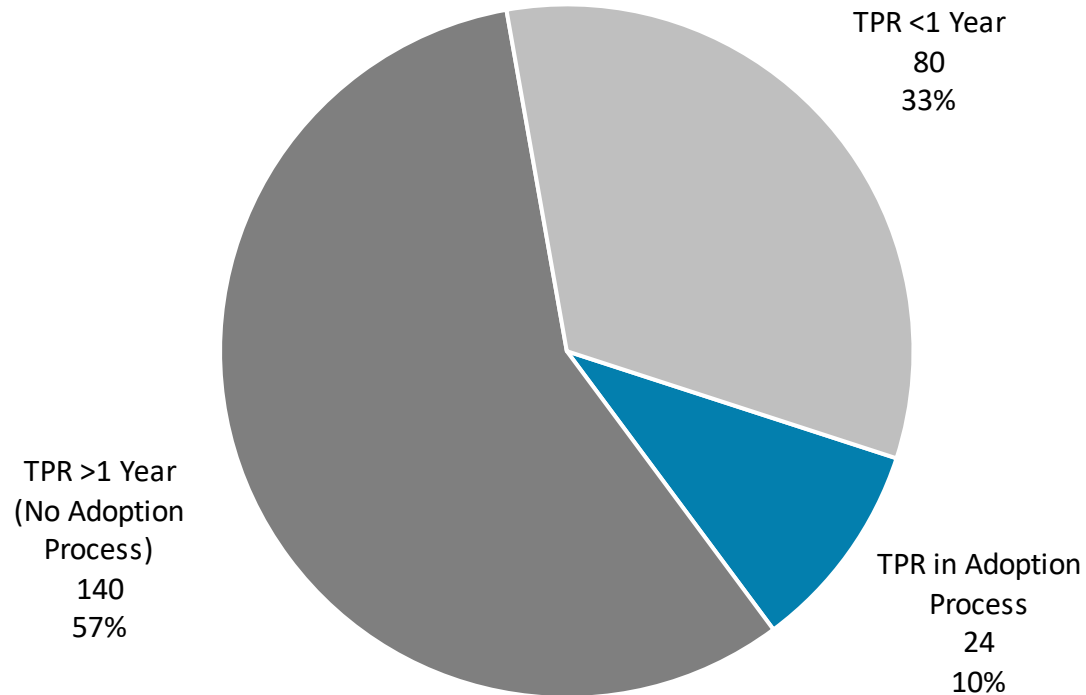
## Data Review *(as of May 31, 2024)*

**244**

Total number of children in Human Service Zone custody with a TPR as of May 31, 2024

**33%**

80 of the 244 children in Human Service Zone custody would potentially be eligible for the Court to consider reinstating their parent's rights under the proposed framework



These **80** children represent **8%** of the **1,028** kids in foster care (HSZ custody)

# Study Committee Process & Strategy

- Reviewed a document published by the National Conference of State Legislatures on Reinstatement of Parental Rights which summarized all states legislation on this topic (22 currently).
- Reviewed data related to termination of parental rights and length of stay in foster care without permanency.
- Discussed cases where such a statute would have been helpful and applicable in North Dakota cases.
- Determined initially that the group did indeed feel a reinstatement of parental rights statute was warranted, and recommended we move forward to draft such a statute.



# Study Committee Process & Strategy

- Review other state statutes
  - Reviewed five state's statutes (Minnesota, Texas, Washington, Maine and Nevada) related to reinstatement of parental rights
  - Completed a review and plotted the relevant points on a comparison chart.
- Identify Recommendations
  - Identified recommendations for ND statute
  - Appointed three members (Aaron Webb, Ashley Leis and Travis Finck) to draft legislation
- Review and Approve draft legislation for Interim Committee consideration



# Key Elements of Study Recommendation

1. Petition may be brought by a party from the original termination of parental rights proceeding.
2. 12 months since the final order for TPR.
3. The child has not been adopted or there is not a written adoption placement agreement in effect.
4. The court shall consider the child's age, maturity, and ability to express a preference and may consider the child's preference regarding the reestablishment of parental rights.
5. A prima facie review of the Petition will occur upon the filing of a petition for reestablishment of parental rights.
6. The court may dismiss the petition if it finds that the petition has not established a case justifying reinstatement or will set a hearing date for an evidentiary hearing if the petition does establish a prima facie case.



# Key Elements of Study Recommendation

7. Counsel will be appointed for the child regardless of income.
8. Counsel for birth parents subject to household income.
9. The court may order a trial home visit to create a transition plan.
10. The burden of proof for the petitioner is “clear and convincing” evidence.
11. A petition for the reestablishment is not allowed if the subject of the petition has previously had parental rights terminated based on a finding in a legal proceeding of either sexual abuse or has a conviction for intentional conduct that resulted in the substantial bodily injury or death of a minor.
12. If the court denies a petition under this chapter after a hearing, the court may issue a written order barring the filing of subsequent petitions by the genetic parent.

# Reinstatement of Parental Rights Study Next Steps

**June 2024**

- Present information to the Legislative Interim Committee
- Present draft legislation prepared by Study Committee



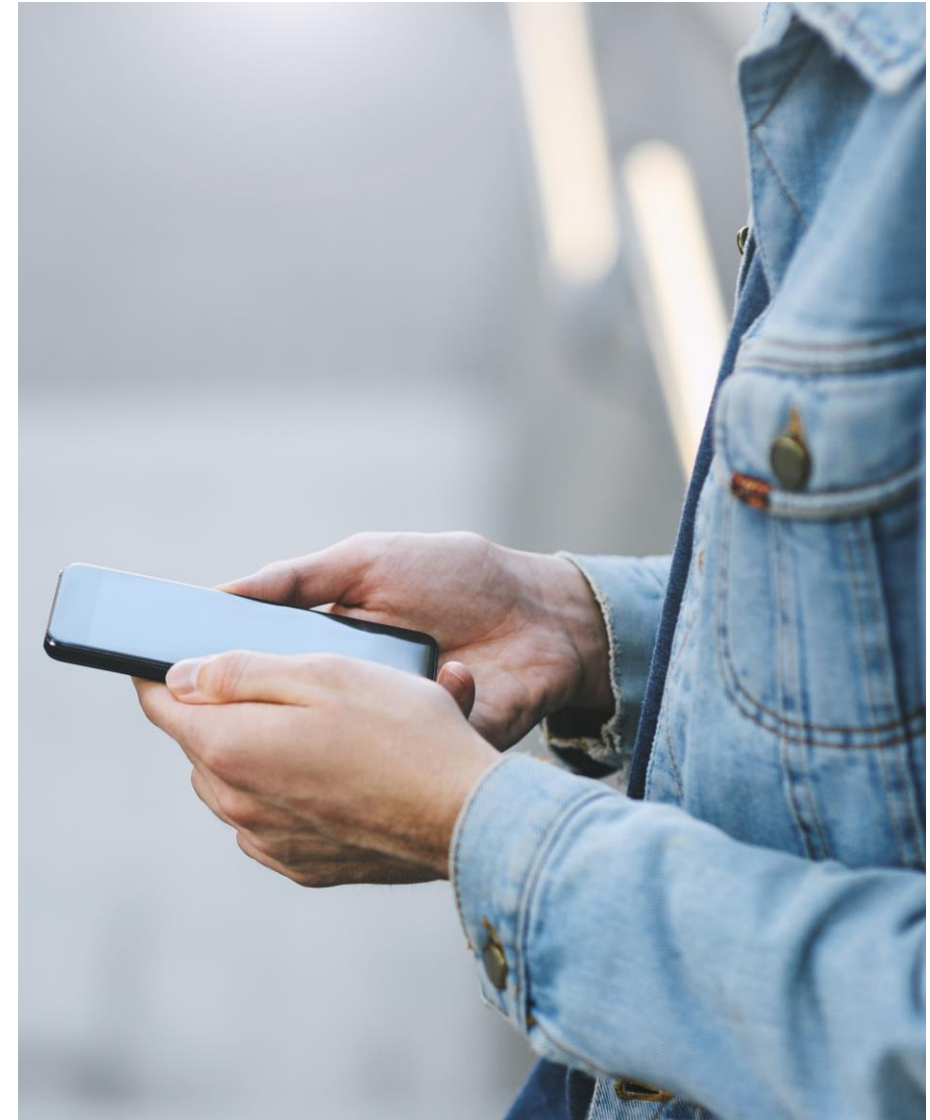
# CFS Contact information

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## **Definitions.**

In this chapter:

1. "Child" means an individual under the age of eighteen years.
2. "Custodian" means a person, other than a genetic parent or legal guardian, which stands in loco parentis to the child and a person to which legal custody of the child has been given by order of a court.
3. "Department" means the department of health and human services.
4. "Division of juvenile services" means the division within the department of corrections and rehabilitation established in chapter 27-21.
5. "Genetic parent" means the biological mother or adjudicated mother of the child, or the presumed father or adjudicated father of the child under chapter 14-20.
6. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department
7. "Parental rights and responsibilities" means all rights and responsibilities a genetic parent has concerning the parent's child.
8. "Reestablishment of the legal parent and child relationship" means the physical reunification of a child under the custody of the human service zone, or division of juvenile services and a previously terminated genetic parent and restoration of all rights, powers, privileges, immunities, duties, and obligations that were severed and terminated by the court under section 27-20.3-20.

## **Jurisdiction.**

The juvenile court has exclusive original jurisdiction on all proceedings for reestablishment of the legal parent and child relationship which are governed by this chapter.

## **Venue – Inconvenient forum.**

Except as otherwise provided in this section, a proceeding under this chapter must be commenced in the county in which the child resides.

1. Proceedings for reestablishment of parental rights and responsibilities must be brought in the court for the place in which, at the time of filing or granting the petition, the child subject of the petition resides or in which the agency having the care, custody, or control of the child is located.
2. If the court finds in the interest of substantial justice that the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceeding in whole or in part on any conditions that are just.

### **Petition – Who may prepare and file.**

1. A petition for reestablishment of the legal parent and child relationship may be filed by any interested party from the original termination of parental rights proceeding when:
  - a. in cases where the state's attorney is the petitioning party, both the responsible custodian and the state's attorney agree that reestablishment of the legal parent and child relationship is in the child's best interests;
  - b. the genetic parent is willing and has the capability to provide day-to-day care and maintain the health, safety, and welfare of the child;
  - c. at least 12 months have elapsed following a final order terminating parental rights and the child remains in foster care;
  - d. there is no pending litigation or appeals pertaining to the action;
  - e. the child has not been adopted; and
  - f. the child is not the subject of a written adoption placement agreement between the responsible custodian and the prospective adoptive parent.

### **Contents of petition.**

1. A petition for reestablishment of the legal parent and child relationship shall be signed under oath by the petitioner and shall state the following:
  - a. the full name, date of birth, address, and all other legal names or aliases by which both genetic parents have been known at any time;
  - b. the full name and date of birth of each child for whom reunification is sought;
  - c. the petitioner's relationship to each child for whom reunification is sought;
  - d. to which genetic parent or parents the rights are sought to be reestablished;
  - e. why reunification is sought and why reunification is in the child's best interest;
  - f. the details of the termination of parental rights for which reunification is sought, including the date and jurisdiction of the order, and the court file number and date of any prior order terminating parental rights;
  - g. the details of any other active juvenile court case in which the genetic parent is a named party, including court file number;
  - h. what steps the genetic parent has taken toward personal rehabilitation since the time of the order terminating parental rights, including treatment, work, or other personal history that demonstrates rehabilitation;
  - i. how the genetic parent whose rights are sought to be reestablished has corrected the conditions that led to the order terminating parental rights for which reunification is sought;
  - j. reasons why the genetic parent is willing and capable to provide day-to-day care and maintain the health, safety, and welfare of the child; and
  - k. all prior requests by any party, whether for the present order terminating parental rights or for any other orders terminating parental rights, whether granted or not.

**Petition may not be brought in certain circumstances.**

A petition for the reestablishment of the legal parent and child relationship may not be brought if the genetic parent whose rights are the subject of the petition for reestablishment has previously had parental rights terminated based on a finding in a legal proceeding of either sexual abuse or other has a conviction for intentional conduct that resulted in the substantial bodily injury or death of a minor.

**Right to appointed counsel.**

1. A child within the jurisdiction of the court in an action arising under this chapter has the right to be represented by counsel in all proceedings in which a petition has been filed. Counsel for the child must be appointed, regardless of income, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is of sufficient age and competency to assist counsel.
2. A child who is fourteen years of age or older may waive the right to counsel. The waiver must be made on the record and the court must determine the waiver is knowing, voluntary, and intelligent. If a child waives counsel for a hearing, the child must be informed of the right to revoke the waiver and request counsel at all subsequent hearings.
3. A genetic parent is entitled to counsel upon the filing of an application for counsel and a determination of indigency. If a party appears without counsel, the court shall determine whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel.

**Appointment of guardian ad litem for child - Immunity.**

In any proceeding under this chapter, the court, upon motion of the court or by motion or agreement of the parties, shall appoint a guardian ad litem for a child who is party to the proceeding. The guardian ad litem shall serve as an advocate of the child's best interests. A guardian ad litem appointed under this section is immune from civil liability for damages for any act or omission arising out of that individual's duties and responsibilities as guardian ad litem, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

**Prima facie review of petition.**

1. Upon filing of a petition for the reestablishment of the legal parent and child relationship, the court shall consider the petition without oral argument or evidentiary hearing and shall deny the petition unless the court finds the petitioner has established a prima facie case justifying that the reestablishment of parental rights is in the child's best interest. If a prima facie case is not established, the court shall dismiss the petition.
2. If a prima facie case is established, the court shall set a date for an evidentiary hearing. The clerk of district court or juvenile court shall provide a copy of the petition and summons, if any, to all interested parties.

### **Trial home placement.**

1. After the petition is filed, the court may order the necessary parties to create a transition plan. The plan must provide for the health and safety of the child and outline the transition services to the genetic parent, as well as the conditions and supervisions required by the zone for transitioning the child into the home on a trial basis, with the ultimate goal being full reunification before the hearing on the petition.
2. The human service zone shall monitor the genetic parent during the implementation of the plan and shall identify and assist the genetic parent in utilizing appropriate family preservation strategies and accessing community resources to provide for the health and safety of the child.
3. During the time of transition, the human service zone shall remove the child from the genetic parent's home upon any abuse or neglect allegations. If the child is removed, the human service zone shall notify the court which shall deny the petition as provided for in this chapter.

### **Hearing.**

1. The petitioner has the burden of proof in the hearing.
2. At the hearing, the court may grant the petition ordering the reestablishment of the legal parent and child relationship only if it finds by clear and convincing evidence that:
  - a. reestablishment of the legal parent and child relationship is in the child's best interests;
  - b. there is no pending litigation or appeals pertaining to the action;
  - c. the genetic parent whose rights are sought to be reestablished is not named in any other active juvenile court case;
  - d. the child has not been adopted;
  - e. the child is not the subject of a written adoption placement agreement between the responsible social services agency and the prospective adoptive parent;
  - f. at least 12 months have elapsed following a final order terminating parental rights and the child remains in foster care;
  - g. the genetic parent has corrected the conditions that led to the order terminating parental rights; and
  - h. the genetic parent is willing and has the capability to provide day-to-day care and maintain the health, safety, and welfare of the child.
3. In determining whether to grant a petition under this chapter, the court shall consider the child's age, maturity, and ability to express a preference and may consider the child's preference regarding the reestablishment as one factor, considered along with all other relevant factors, in making the determination.

### **Order reestablishing parental rights – Effect.**

1. In granting a petition for reestablishment of the legal parent and child relationship, the court shall enter its findings in a written order that further states that from the date of the order of reestablishment of parental rights, the child is the child of the genetic parent whose rights were terminated and must be accorded all the same rights as existed prior to the order terminating parental rights, including inheritance rights. The order must further state that all legal rights, powers, privileges, immunities, duties and obligations to each other as genetic parent and child are reestablished.
2. As of the effective date of a court order providing for the reestablishment of the legal parent and child relationship:
  - a. the child is the legal child of the genetic parent;
  - b. the genetic parent whose rights were terminated under a previous order of the court is restored to the status of legal parent of the child and all rights, powers, privileges, immunities, duties, and obligations that were severed and terminated by the court under section 27-20.3-20 are restored;
  - c. the order placing the child under the care, custody, and control of the human service zone, or division of juvenile services is terminated; and
  - d. permanent legal and physical custody of the child is awarded to the genetic parent.
3. An order reestablishing the legal parent and child relationship as to one genetic parent of the child has no effect on:
  - a. the legal rights of any other genetic parent whose rights to the child have been terminated by the court; or
  - b. the legal sibling relationship between the child and any other children of the genetic parent.

### **Denial - Subsequent petitions.**

If the court denies a petition under this chapter after a hearing, the court may issue a written order barring the filing of subsequent petitions by the genetic parent. The court must provide the length of the time period the genetic parent is barred from filing a subsequent petition, make written findings in support of the order, and evaluate the best interests of the child.