
Policy Research Brief

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The Inclusion of Disability as Grounds for Termination of Parental Rights in State Codes

This Policy Research Brief examines state policies regarding termination of parental rights, focusing on the extent to which states use disability status as grounds for termination. It was written by Elizabeth Lightfoot, Ph.D., School of Social Work, University of Minnesota, Minneapolis; and Traci LaLiberte, Ph.D., Research and Training Center on Community Living, Institute on Community Integration, University of Minnesota, Minneapolis. Dr. Lightfoot may be reached at (612) 624-1220 or elightfo@umn.edu. Dr. LaLiberte may be reached at (612) 625-9700 or lali0017@umn.edu. The analyses in this Brief were supported in part by Grant #926-552 from the Minnesota Agricultural Experiment Station (MAES), University of Minnesota.

■ Introduction

The number of families headed by a parent with a disability has increased substantially during the past century, particularly those headed by parents with intellectual and/or developmental disabilities. Likewise, parents with disabilities are increasingly involved in the child welfare system, though the overall prevalence of such involvement is unknown due to inadequate record-keeping and the paucity of research. For example, we do know from the 1994-1995 National Health Interview Survey - Disability Supplement (NHIS-D) that only 51% of parents with intellectual and/or developmental disabilities were currently living with their children, but we don't know the ages of the children living with and apart from those parents (Larson, Lakin, Anderson, & Kwak, 2001). Others have estimated that 40-60% of parents with developmental disabilities have had their children removed from their care at some point in time, and reunification rates are unknown (Kennedy, Garbus & Davis, 1999).

The child welfare system is often ill-equipped to provide

services to parents with disabilities and their families, and often places the focus on a parent's disability rather than on assessment of a parent's ability to keep his or her child safe. This problematic interface between the child welfare system and parents with disabilities has been documented for more than two decades, however efforts to address this interface have been negligible (Booth & Booth, 1993; McConnell & Llewellyn, 1998, 2002; Tymchuk, 1999, 2001; Tymchuk, Llewellyn, & Feldman, 1999). This focus on a parent's disability by the child welfare system extends to the family courtroom, particularly in regard to termination of parental rights (TPR).

State courts have become increasingly involved in terminating parental rights due to child maltreatment in the 25 years since the passage of the federal Adoption Assistance and Child Welfare Act of 1980 (Hardin, 1992, 1996), which set out requirements for states regarding child welfare, including both family preservation and permanency planning. The Adoption and Safe Families Act of 1997 (ASFA), designed in part to shorten the stay of abused or neglected children in foster care, has mandated that state courts become even more involved in TPR. There are many specific requirements regarding TPR that states must comply with in order to receive federal funding, including initiating proceedings to sever parental rights when a child has been in foster care for 15 of the most recent 22 months, when a child is an

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abandoned infant, and when a parent has committed murder, manslaughter, or felonious assault to their child or another child. Most states have incorporated these new ASFA TPR requirements into their state statutes (Duquette & Hardin, 1999).

In addition to the ASFA-related TPR grounds, most states have additional grounds for TPR, some which date back many decades. States vary in their non-ASFA related grounds, with some having extensive and explicit lists of grounds for termination and others having very limited and/or very broad grounds for termination. Examples of other common grounds include chronic substance abuse, failure to maintain contact with a child or failure to maintain support of a child (Duquette & Hardin, 1999).

More than two-thirds of the states also include parental disability as part of their state grounds for TPR. Although recent research has found that parents with developmental disabilities or mental illness are not more likely to maltreat their children than parents without disabilities (Glaun & Brown, 1999; Oyserman, Mowbray, Meares, & Firminger, 2000), recent studies have found very high rates of TPR of parents with disabilities in the United States (Accardo & Whitman, 1989) and abroad (Llewellyn, McConnell, & Ferronato, 2003; Mirfin-Veitch, Bray, Williams, Clarkson, & Belton, 1999).

This brief will examine how states are including disability in their TPR statutes, present recent trends related to TPR statutes and parental disability, and suggest a direction for states to consider regarding the inclusion of disability in state codes for TPR.

■ Method

This study used legal document analysis, consisting of a comprehensive Boolean search of the state codes of the 50 states and District of Columbia relating to TPR, examining the most recent state codes available on Lexis-Nexis in August 2005. TPR and related statutes were searched for contemporary and historical disability-related terms and their common cognates, such as “disability,” “mental,” “handicap,” “disorder,” and “incapacity.” Further, definitions for child welfare terms such as “unfit parent” and “best interest of the child” were explored to see if these were statutorily defined elsewhere as including parental disability. Two researchers independently conducted the searches, and the searches were reconciled. A code list was then developed to measure for preciseness, scope, use of language, and references to accessibility or fairness, and the statutes were reanalyzed and groupings developed.

While the language used in this brief reflects contemporary United States usage of disability-related terms, the vast majority of the state codes relating to TPR use extremely outdated terminology when discussing a parent’s disability. Many codes use language from the 1940s and 1950s, such as

“mental deficiency.” This archaic language does not easily translate to contemporary legal, medical or social definitions of disability. Further, many people consider the type of language contained in the state statutes to be offensive, and certainly not people-first language. In addition, the state codes tend to use imprecise definitions of disability, and emphasize parental conditions rather than parental behaviors.

■ Findings

Parental Disability in State TPR Statutes

While many state courts have ruled that a parental disability *alone* is not justification for TPR (among them are Arizona,¹² Colorado,¹³ Louisiana,¹⁴ and Nebraska¹⁵) the majority of states include parental disability in their codes as grounds for TPR if a disability impacts a parent’s ability to care for his or her child, or at least as a condition to take into consideration when determining whether a person is unfit to parent. As of August 2005, 37 states included disability-related grounds for TPR, while 14 states did not include disability as grounds for termination.

Arizona is an example of a state that includes specific grounds relating to disability in determining TPR. Arizona’s state code indicates that “evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child.”¹ The code then lists 11 separate grounds, including many of the ASFA-required grounds, such as abandonment of a child or serious physical or emotional abuse by the parent. The third ground listed is a criteria specifically related to disability. It reads:

That the parent is unable to discharge the parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.²

Thus, in Arizona, parental rights can be terminated if the state proves that certain permanent or long-term disabilities will cause a parent to be unable to take care of his or her children appropriately. However, in Arizona and many other states, the state courts have ruled that disability alone is not justification for termination of parental rights.³ Nonetheless, disability is included in the state statute as a specific condition, when many other conditions are not listed.

Montana is an example of a state that includes disability as a condition to consider when terminating parental rights. Montana’s state code includes several criteria for termination for the parent-child legal relationship, including all of the grounds required by ASFA, such as abandonment or the

parent's conviction of a felony. Termination can also be ordered if a child is determined to be a youth in need of care and his or her parents have not complied with or been successful with a treatment plan and "the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time."⁴ In determining whether the conduct or condition is unlikely to change within a reasonable time, courts are to consider factors such as history of violent behavior, excessive use of intoxicating liquor or a dangerous drug, or long-term imprisonment. In addition, courts are to consider:

...emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time.⁵

Further, the Montana state code says that a treatment plan is not required if "two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of a parent within a reasonable time."⁶ Thus, if two outside professionals testify that a parent is unable to assume the role of parent, the Montana child welfare system is not required to attempt to provide any services to this parent, such as pursuing accommodations that may support parenting efforts, providing specialized parenting classes, or finding alternative arrangements, such as family foster care or intensive parenting supports.

Types of disability

All of the states that include disability in their grounds for termination specify types of disabilities for courts to consider. Currently, 36 states have specific grounds for mental illness, 32 have specific grounds for intellectual or developmental disability, 18 have grounds for emotional disability, and 8 have grounds for physical disability (see Table 1). Two states, Missouri and Tennessee, also use the generic term "mental condition," which can imply both a mental illness or an intellectual or developmental disability. North Carolina is the only state that also specifies "organic brain syndrome" as a specific disability to consider when terminating parental rights. The most common combination of disability types is "emotional illness, mental illness and mental deficiency," with this combination of disability types used almost verbatim by 11 states. The following is a summary of the usages of the various terms across states:

- **Mental Illness.** Mental illness is the most commonly included disability in TPR grounds or considerations for termination. Most states refer to mental illness as "mental illness" or "mentally ill," though it is also called "mental disorder," "mental health," "mental status," "psychological incapacity," or "psychopathology." Many states either have no definition of mental illness or a very broad definition. For example, Colorado's code allows for TPR if

there exists clear and convincing evidence of "emotional illness, mental illness or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child."⁷ There is no definition of mental illness provided in the particular section of the code, nor is there direction as to an appropriate definition that may be present in other parts of the code.

Other states have mental illness more explicitly defined, usually using a general state definition of the term. For example, Maryland's TPR code reads as follows: "...the natural parent has a disability that renders the natural parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for long periods of time."⁸ Disability is defined for the TPR code as meaning either a "mental disorder" or "mental retardation," as defined in the state code. "Mental disorder," as defined generally in the Maryland state code, "includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another."⁹

Several states have narrower definitions of how mental illness can be used for TPR, usually including severity and/or chronicity. For example, Iowa's state code specifies that parental rights may be terminated if a parent has a chronic mental illness, has been repeatedly institutionalized, and presents a danger to him- or herself or others.¹⁰ Similarly, Wisconsin limits the use of mental illness as grounds for termination solely for individuals who are currently hospitalized and have been hospitalized for two of the previous five years.¹¹

- **Intellectual or Developmental Disability.** Thirty-two state codes include a reference to a disability that in modern terminology would consist of an intellectual or developmental disability. However, the term "intellectual disability" is never used, and "developmental disability" is only used by three states. The most commonly used description of intellectual or developmental disabilities in state statutes is "mental deficiency" used by 21 states. The term "mental deficiency" was common usage in the United States from the 1940s through the 1960s, with the main professional association called the American Association on Mental Deficiency through the 1970s. However, this term fell out of favor and by the 1970s was replaced by the term "mental retardation." Now both terms are considered pejorative, with many advocates and researchers recently adopting the term "intellectual disability" as a more respectful term. However, the term "mental retardation" still is commonly used in diagnostics. The term "developmental disability" is a broader term than "mental retardation" that includes other types

of disabilities that occur during the developmental period, such as cerebral palsy that may not involve an intellectual disability. This term was first defined federally in 1970 (The Developmental Disabilities Services and Facilities Construction Amendments of 1970), and has since been amended to focus on functional limitations caused by life-long impairments that first occur prior to age 22.

Most of the state codes that include provisions for TPR in conjunction with an individual's intellectual or developmental disability do not include a definition in their state codes. For example, most of the states that include the term "mental deficiency" do not include a state definition of mental deficiency anywhere in their state code. As there is no modern definition of this term, courts will have to rely on precedent that may be well out of date.

Interestingly, the states that use the more modern terms "developmental disabilities" or "mental retardation" in their TPR statutes tend to have much more precise definitions of the disability. All three of the states using "developmental disabilities" rely on a state definition of developmental disabilities, which generally mirrors the federal definition. Likewise, most of the eight states that use the term "mental retardation" or "mentally retarded" have a precise definition of mental retardation that is similar to standard diagnostic usage.

- **Emotional Disability.** Eighteen states include a reference to emotional disability, with thirteen referring to it as "emotional illness," two as "emotional health," and one each as "emotional disability," "emotional disturbance," and "emotional status." "Emotional illness" is not defined in any of the state codes, except to say that it must not be transitory. In fact, in Colorado, Nevada, North Dakota, and Virginia the only place the term "emotional illness" is used in the entire state code is in the TPR statute. Like the term "mental deficiency," the term "emotional illness" again does not have any agreed-upon current definition by medical, psychological or advocacy groups. It reflects language originating from the Psychoanalytic period of the 1950s when it was believed that children could not have many forms of mental illness because they had yet to become fully developed (E. Taylor, personal communication, May 17, 2005). While the current view is that an emotional illness is caused by the environment, whereas mental illness is caused by the brain, there are not current agreed-upon definitions of what an emotional illness or emotional disability is.
- **Physical Disability.** Only eight states include physical disability in their grounds for TPR. Like mental illness and emotional illness, physical disability is usually not defined, except by duration and/or severity. States refer to physical disability as "physical disability," "physical incapacity," "physical health," "physical disorder" or "physical illness." None of the states using physical

disability as grounds for termination of parental rights also include anything about mitigating a disability with the use of appropriate accommodations anywhere in the child protection code, nor have a precise definition for a physical disability.

Focus on conditions rather than behaviors

A major concern about the inclusion of disability in the grounds for termination is that it can shift the focus from a parent's behavior to a parent's condition. Almost all of the non-disability related grounds for TPR are based on parents' past or current behaviors, such as neglect, abuse or abandonment. While no states have criteria indicating that having a disability by itself is grounds for termination, it also is one of the only grounds for termination that is based on a contributing factor to a parent's behavior, rather than the parent's behavior itself. By contrast, of the many states that include failure to financially support a child as a reason for termination, none list the causes of lack of financial support in their statutes, such as chronic unemployment, having too many children to support adequately or lack of a high school diploma.

States Without Disability Grounds for TPR

Currently, there are 14 states that do not refer to a parent's disability in their state TPR statutes. All of these states include language in their codes allowing states to terminate parental rights based on abusive or neglectful behavior of a parent. For example, Maine's state code says:

The court finds, based on clear and convincing evidence, that: a) Termination is in the best interest of the child; and b) Either: i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs; ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs...¹⁶

The provisions in Maine's TPR statute allow the courts to terminate based on a parent's specific behaviors relating to taking care of his or her child. The courts in Maine have found that it is indeed proper to terminate a parent's rights under this statute if a mental illness affects how the parent cares for his or her child.¹⁷ However, with disability not included in the state statute, the focus necessarily has to be more on the individual's behavior rather than the individual's condition.

In the past several years, both Rhode Island and Idaho have consciously eliminated disability language from their state codes (see Figure 1 for a description of the Idaho process). The rationale in both states was that the disability language was unnecessary, and could result in unequal

treatment in the state courts for people with disabilities. In Idaho, they not only eliminated the disability language, but also inserted protections for people with disabilities, and inserted a provision that parents with disabilities have the option to show how their use of adaptive equipment can aid in their parenting.

Americans with Disabilities Act and TPR

All states are covered by Title II of the Americans with Disabilities Act (ADA), and thus are barred from discriminating against people with disabilities in the provision of services. Many believe that the provision of child protection services is a public service that is covered under this federal legislation. Two states, Arkansas and Idaho, have made this connection explicit, including a reference in their codes' TPR sections that the department of human services cannot terminate parental rights if they have not provided reasonable accommodations in accordance with the ADA to parents with disabilities.

However, many state appellate courts have ruled that the ADA is not an appropriate defense in regard to TPR for people with disabilities on a number of grounds. Among them is the assertion that the ADA does not apply to TPR proceedings since TPR is based on the child's welfare, not the parent's; and that the ADA does not apply because TPR is not a public service, program or activity described under the ADA.¹⁸ Currently, only the Texas appellate court has ruled that the ADA may be used in a TPR hearing, but in the particular case being reviewed it was not appropriate.¹⁹

Trends

Currently, there are conflicting trends in states regarding the inclusion of disability in the TPR statutes. Despite some states' actions towards eliminating disability language from state parental rights termination codes, there has been recent activity at both federal and state levels to further include disability language. In 1997, a Clinton administration taskforce, *Adoption 2002: The President's Initiative on Adoption and Foster Care*, released its *Guidelines for Public Policy and State Legislation Governing Permanence for Children* (Duquette & Hardin, 1999). These guidelines were being developed concurrent with the adoption of the ASFA legislation, and thus include many recommendations to states related to the new emphasis on permanency for children. However, the guidelines also include a recommendation that "parental incapacity" be included in state codes. The guideline reads: "We recommend that State law authorize termination of parental rights based on parental incapacity that makes the parent unable to care for the child who is the subject of the termination proceeding...." (Duquette & Hardin, 1999, p. 72). It goes on to say that "many [state codes] do not make it clear that, in some cases, sufficient evidence of parental incapacity is enough to establish grounds for termination" (p. 72). While the

majority of the other recommendations in the document focus on behaviors, this recommendation was squarely based on a condition. Further, the guidelines suggest that an individual with a disability be evaluated for future capacity, and termination be made if it is anticipated that an individual with a disability would be unable to care for a child in the future:

In evaluating the parent's disabilities, it is important to consider not only the parent's capacity to meet the child's immediate needs, but also the parent's capacity to care for the child as the child grows up. For example, a particular developmentally disabled parent may be capable of caring for an infant but not able to supervise or meet the needs of an older child. (p. 72)

Despite these guidelines, no states have actually adopted new disability language related to TPR or strengthened existing language according to the guidelines. Only South Dakota has attempted to include new disability language in the past seven years, though the 1999 bill introduced in South Dakota's state legislature did not prevail and was not supported by many of those in the State administration. However, there is a chance that some other states may attempt to comply with the federal guidelines and include disability language.

■ Discussion and Conclusion

Parents with disabilities are at a high risk of discrimination in TPR proceedings if courts remove children on the basis of parental disability, rather than on the basis of specific parental behavior. From this overview, it appears that many states include disability inappropriately in their TPR statutes, including using inappropriate, outdated terminology to refer to a person's disability; using imprecise definitions of disability; and often focusing on disability rather than behavior. While no state focuses solely on disability as a cause for TPR, there is a danger that courts will rely on disability. Of the states that do not include disability-related language in their TPR statutes, they all have general provisions that would allow TPR of parents with disabilities, though such a TPR would focus on the individual's behavior rather than disability status.

As advocates in some states are pushing for the removal of outdated disability language in other sections of their state codes, it is likely that states may be addressing the disability language in their TPR codes as well. It is an appropriate time for states to thoughtfully reconsider whether the inclusion of disability in their state codes for TPR is necessary, or discriminatory.

Figure 1: Idaho Process for Removal of Disability Language from State TPR Codes

During public forums and focus groups held in 1999 to gather input for the Idaho State Independent Living Council's (SILC) three-year plan, parents with disabilities raised concerns about losing custody of their children based on parental disability. The Idaho SILC developed a committee to examine the issue; it was called FAMILY (Fathers and Mothers Independently Living with their Youth) and consisted of people with disabilities, advocates, legislators, and members of disability organizations. The committee determined that legislative reform was necessary to meet their goal of creating "a process that was consistent and guaranteed that no parent would lose custody of his/her children solely due to the fact that they had a disability (Idaho SILC, 2005)." FAMILY intended to eliminate inappropriate disability language in Idaho statutes, include protections against disability discrimination, and create a fair and consistent parental evaluation system that allowed parents with disabilities to show how adaptive equipment and support services helped them parent their children.

While FAMILY was ultimately successful in changing legislation, their advocacy efforts took four years. In partnership with supportive legislators, bills were first introduced in the Idaho legislature in 2000 and 2001. However, despite numerous testimonials by parents with disabilities who had lost parental rights based upon their disability, and overwhelming support in the Senate, the House blocked legislative reform both years. In 2002, the Chair of the House Health and Welfare Committee happened to see *I am Sam*, a movie about a father with a developmental disability who lost custody of his daughter through a child protection action. Impressed with the movie, the Chair took the entire House Health and Welfare Committee along with Kelly Buckland, the director of the Idaho SILC, to see the film. The portrayal of the father's abilities to parent his daughter and his struggle within the system were eye-opening to committee members.

FAMILY introduced legislation again in 2002, this time focusing on divorce, adoption, guardianship, and termination of parental

rights, with a strong emphasis on provisions that allow parents to present evidence detailing how adaptive equipment and support services enable them to parent effectively. This bill passed the House and Senate, and became law. In 2003, FAMILY introduced legislation regarding child protection, with a special emphasis on creating an evaluation system that is consistent and fair for parents, and requiring that child protection investigators be knowledgeable about disability accommodations. This legislation also passed, and FAMILY was thus successful in accomplishing their goals, and Idaho became the first state in the nation to include disability protections in their termination of parental rights statutes.

FAMILY was successful as a result of its impressive collaboration, education, and lobbying. Under the leadership of Kelly Buckland, the SILC collaborated with families, advocates, and disability organizations to identify their goals and strategize solutions. FAMILY eventually included members of over 40 local, state, and national agencies, as well as individual advocates. Education was a key to this successful legislative reform. FAMILY committee members educated legislators about parenting with disabilities, informing legislators about how parents with disabilities can meet their parental responsibilities in a variety of ways, including the use of adaptive equipment. This education included individual meetings with legislators, as well as through other means, such as a popular movie. And, FAMILY members were successful lobbyists. They built on existing relationships with legislators and built new relationships. They tried different strategies for introducing legislation, and compromised when necessary. But ultimately, FAMILY was relentless in advocating for the basic rights of parents with disabilities to be treated fairly in regard to issues related to child rearing, and did not stop lobbying until they reached their goal.

For more information about the SILC's FAMILY Committee and its legislative efforts, see www.2.state.id.us/silc/legislupdate.htm.

Table 1. State Codes' Inclusion of Disability Language for Termination of Parental Rights

State	Disability as TPR grounds	ID/DD*	Mental Illness	Emotional Disability	Physical Disability	Other	Language
AL	Yes	X	X	X			Emotional illness Mental illness Mental deficiency
AK	Yes	X	X	X			Mental illness Serious emotional disturbance Mental deficiency
AZ	Yes	X	X				Mental illness Mental deficiency
AR	Yes	X	X	X			Mental illness Emotional illness Mental deficiencies
CA	Yes	X	X				Developmentally disabled Mentally ill Mentally disabled Mental incapacity Mental disorder
CO	Yes	X	X	X			Emotional illness Mental illness Mental deficiency
CT	No						
DE	Yes	X	X				Mental illness Psychopathology Mental retardation Mental deficiency
DC	Yes		X	X	X		Physical, mental and emotional health
FL	No						
GA	Yes		X	X	X		Medically verifiable deficiency of the parent's physical, mental, or emotional health
HI	Yes	X	X				Mentally ill Mentally retarded
ID	No						

* Intellectual or Developmental Disability

Table 1, continued. State Codes' Inclusion of Disability Language for Termination of Parental Rights

State	Disability as TPR grounds	ID/DD*	Mental Illness	Emotional Disability	Physical Disability	Other	Language
IL	Yes	X	X	X			Mental impairment Mental illness Mental retardation Developmental disability
IN	No						
IA	Yes		X				Chronic mental illness and has been repeatedly institutionalized
KS	Yes	X	X	X	X		Emotional illness Mental illness Mental deficiency Physical disability
KY	Yes	X	X				Mental illness Mental retardation
LA	No						
ME	No						
MD	Yes	X	X				Mental disorder Mental retardation
MA	Yes	X	X				Mental deficiency Mental illness
MI	No						
MN	No						
MS	Yes	X			X		Severe mental deficiencies Extreme physical incapacitation
MO	Yes					X	Mental condition (undefined)
MT	Yes	X	X	X			Emotional illness Mental illness Mental deficiency
NE	Yes	X	X				Mental illness Mental deficiency
NV	Yes	X	X	X			Emotional illness Mental illness Mental deficiency

* Intellectual or Developmental Disability

Table 1, continued. State Codes' Inclusion of Disability Language for Termination of Parental Rights

State	Disability as TPR grounds	ID/DD*	Mental Illness	Emotional Disability	Physical Disability	Other	Language
NH	Yes	X	X				Mental deficiency Mental illness
NJ	No						
NM	Yes	X	X		X	X	Physical disorder or incapacity Mental disorder or incapacity Hospitalization
NY	Yes	X	X				Mental illness Mental retardation
NC	Yes	X	X			X	Mental retardation Mental illness Organic brain syndrome
ND	Yes	X	X	X	X		Physical illness or disability Mental illness or disability Emotional illness or disability Other illness or disability
OH	Yes	X	X	X	X		Chronic mental illness Chronic emotional illness Mental retardation Physical disability
OK	Yes	X	X				Mental illness Mental deficiency
OR	Yes	X	X	X			Emotional illness Mental illness Mental Deficiency
PA	No						
RI	No						
SC	Yes	X	X		X		Mental deficiency Mental illness Extreme physical incapacity
SD	No						
TN	Yes		X	X			Mental condition Mental and emotional status
TX	Yes	X	X	X			Mental or emotional illness Mental deficiency

*Intellectual or Developmental Disability

Table 1, continued. State Codes' Inclusion of Disability Language for Termination of Parental Rights

State	Disability as TPR grounds	ID/DD*	Mental Illness	Emotional Disability	Physical Disability	Other	Language
UT	Yes	X	X	X			Emotional illness Mental illness Mental deficiency
VT	No						
VA	Yes	X	X	X			Mental or emotional illness Mental deficiency
WA	Yes	X	X				Psychological incapacity Mental deficiency
WV	Yes	X	X	X			Emotional illness Mental illness Mental deficiency
WI	Yes	X	X			X	Presently, and for at least two of the previous five years, has been an inpatient at a hospital, licensed treatment facility or state treatment facility due to mental illness or developmental disability
WY	No						

* Intellectual or Developmental Disability

Totals: Yes = 37, No = 14

■ Notes

- ¹ A.R.S. § 8-533(B)
- ² A.R.S. § 8-533(B)(3)
- ³ Courts in Arizona re Maricopa County Juvenile Action No. JS-5209, 143 Ariz. 178, 692 P.ds 1027 (Ct. App. 1984)
- ⁴ 41-3-609(1)(f)(ii)
- ⁵ MCA § 41-3-609(2)(a)
- ⁶ 41-3-609(4)(b)
- ⁷ C.R.S. 19-3-604(1)(b)(I) (2004)
- ⁸ Md. FAMILY LAW Code Ann. § 5-313 (2004)
- ⁹ Md. FAMILY LAW Code Ann. § 10-101
- ¹⁰ Iowa Code § 232.116 (2004)
- ¹¹ Wis. Stat. § 48.415 (2004)
- ¹² In re Maricopa County Juvenile Action No. JS-5209, 143 Ariz. 178, 692 P.ds 1027 (Ct. App. 1984)
- ¹³ People in Interest of C.B., 740 P.2d 11 (Colo. 1987)
- ¹⁴ State ex re. C.R., La. App. 00-1916, 778 So. 2d 84, 2000 La. App. LEXIS 3600 ((La. App. 1 Cir. Dec. 22, 2000)
- ¹⁵ In re. State v. Holley, 209 Neb. 437, 308 N.W. 2d 341 (1981)
- ¹⁶ 22 M.R.S. § 4055
- ¹⁷ In re David G., 659 A.2d 859, 1995 Me. LEXIS 130 (Me. 1995)
- ¹⁸ *J.T. v. Arkansas Dept. of Human Services*, 947 S.W.2d 761 (Ark. 1997); *In re Antony B.*, 735 A.2d 893 (Conn. App. 1999); *In re Doe* (Haw. 2002), 60 P.3d 285, 291 *Stone v. Daviess County Division of Children & Family Services*, 656 N.E.2d 824 (Ind. App. 1995); *State ex rel. B.K.F.*, 704 So.2d 314 (La. App. 1997); *In re Terry*, 610 N.W.2d 563 (Mich. App. 2000); *In re A.P.*, 728 A.2d 375 (Pa. Super. 1999); *In re B.S.*, 693 A.2d 716, 720 (Vt. 1997); *In re Torrance*, 522 N.W.2d 243 (Wis. App. 1994)
- ¹⁹ *In re C.M.* (Tex. App. 1999), 996 S.W.2d 269, 270

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