

Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws Policy Brief

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Intro

Parenthood is a fundamental right in the United States. However, disabled parents continue to be denied access to parenthood. Despite increased attention to disabled parenting by policymakers, researchers and the news media, disabled parents continue to be overrepresented in the family policing system (more commonly called the child welfare system). This overrepresentation stems from many forms of ableism (historical, attitudinal, and institutional). Importantly, the legal system is one institution that continues to shape family policing system involvement and termination rates faced by disabled parents and their families in several ways. One way is through the ableist attitudes held by Judges presiding over child welfare cases who reinforce discriminatory beliefs through their rulings. Another way, which is the focus of this paper, is the reliance on ableist State statutes and laws that explicitly discriminate against parents with disabilities. One category of these laws involves the termination of parental rights (TPR), which in many States, include parental disability as grounds for termination. Given the continued disproportionate representation of disabled parents in the family policies system, this study examined the frequency that State statutes included parental disability as grounds for TPR and investigated the language of the statutes.



Background

In the 19th century, eugenic ideology sought to limit and control the reproduction of those viewed as “unfit,” which included disabled people (Cohen, 2017). The regulation of disabled people’s reproduction was reflected in laws and rulings, the most well-know of which is *Buck v. Bell* (1927), where the Supreme Court of the United States upheld Virginia’s State law allowing for forced sterilization. This regulation was permissible in that it was viewed as in the best interest for the “purity” of future generations. The current family policing system, which is governed by Federal and State laws and statutes continues to regulate disabled people who seek to become or are parents. This is seen in the oversurveillance of disabled parents and consequently the disproportionate rates of referral, case substantiation and termination of parental rights for disabled parents. Termination of parental rights is an extreme legal outcome, which destroys the legal bond between a parent and child. While almost 30 States have introduced or passed legislation aimed at protecting disabled parents in child welfare settings (National Research Center for Parents with Disabilities, 2023), overrepresentation of disabled parents, particularly when looking at rates of TPR persists (National Council on Disability, 2012; Powell et al., 2020). As a result, an examination of the inclusion of parental disability in State termination statutes is warranted.

Methods

Each State's termination statute was located using Lexis+, a legal database. State family policing system statutes were also located and examined. Statutes were cross referenced with a compilation of State termination laws published by the Administration for Children and Families. Content analysis methods were used to allow for the identifying of key themes while investigating State statutes. Mixed methods were also employed to capture the frequency of termination laws that include parental disability and the themes from the content of the statutes.

Findings

Quantitative findings

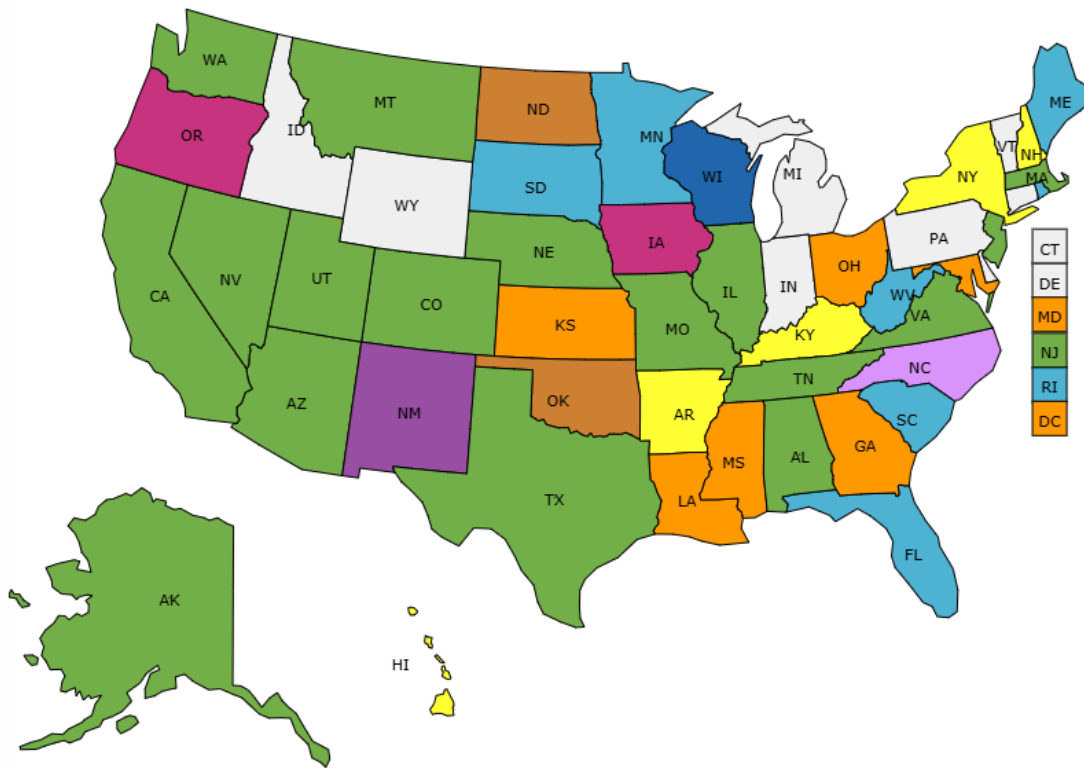
- 42 States the District of Columbia include parental disability as grounds for TPR (also reflected in the map below)
- Compared to National Council on Disability's (NCD) prior analysis of TPR laws, laws in 35 States and the District of Columbia still include parental disability as grounds for TPR (if substance use disorders are not counted)
- Compared to NCD's 2012 analysis, one additional State lists physical disability as grounds for TPR

Qualitative findings

- 16 States still use the phrase "mental deficiency" to describe parents with intellectual disabilities
- Ambiguous language around disability, some states list disability types, other provide vague language such as "severe mental illness"
- Some State laws require the use of experts to assess parental capacity, with no requirement that the expert specialize in disabled parents
- Many laws include arbitrary time periods and focus on the future, allowing for TPR if there is thought to be harm at some point in the future, for example: TN allows for TPR on the basis of parental disability if it is: "unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future" (TN)
- Many statutes seem to suggest that inability to overcome disability permits TPR based on disability, for example, language that TPR is permissible if the disability is thought to "continue for a prolonged indeterminate period" (CA)
- Inconsistent statutory requirements: Some State laws include statutes for reasonable accommodations aligning with the ADA but still allow for TPR based on parental disability
- Many statutes require a nexus between parental disability and actual harm to the child, for ex: That TPR based on parental disability cannot be considered unless there is "a specific showing that there is a causal relation between the disability or disease and harm to the child" (MO)

Conclusion

State statutes concerning TPR and parental disability have remained largely the same since the prior NCD's 2012 investigation. Given the devastating impact of TPR on families and the continued disproportionate TPR rates for disabled parents, these statutes should be challenged on the federal level for violating the Americans with Disabilities Act (ADA) and should be overturned by State laws.



JS map by amCharts

- | | |
|---|--|
| IDD, Psych, Physical/Sensory, SUD, Other | IDD, Psych, Physical/Sensory, SUD |
| IDD, Psych, Physical/Sensory, Other | IDD, Psych, Physical/Sensory |
| IDD, Psych, SUD, Other | IDD, Psych, SUD |
| IDD, Psych | Psych, SUD |
| SUD | None |

(Map data current through October 1, 2022)

Abbreviations used for disability types:

- IDD: intellectual/developmental disabilities
- Psych: psychiatric/emotional disabilities
- Physical/Sensory: physical/sensory disabilities
- SUD: substance use disorder
- Other: other disabilities

Brief adapted from: Powell, R. M. (2023). Legal Abelism: A Systematic Review of State Termination of Parental Rights Laws. *Wash. UL Rev.*, 101, 423.

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