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<p><b>Alabama</b> Ala.Code 1975 §26-18-7(a)(2)</p>	<p>In determining whether or not the parents are unable or unwilling to discharge their responsibilities to and for the child, the court shall consider, and in cases of voluntary relinquishment of parental rights may consider, but not be limited to emotional illness, mental illness or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of such duration or nature as to render the parent unable to care for needs of the child.</p>
<p><b>Alaska</b> Alaska Stat.§47.10.086(c)(5)</p>	<p>A mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months.</p>
<p>Alaska Stat. §25.24.150(g), (h)</p>	<p>[A] parent who has a history of perpetrating domestic violence. . . may not be awarded. . . custody of a child. . . [unless by] a preponderance of the evidence that. . . the parent does not engage in substance abuse, and that the best interests of the child require that parent's participation as a custodial parent because the other parent. . . suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse that affects parenting abilities...</p>
<p><b>Arizona</b> Ariz. Rev. Stat. Ann. § 8-846(B)(1)(b)</p>	<p>A mental illness or mental deficiency of such magnitude that it renders the parent or guardian incapable of benefitting from the reunification services</p>
<p>Ariz. Rev. Stat. Ann. § 8-533 (B)(3)</p>	<p>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: That the parent is unable to discharge 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.</p>
<p><i>Matter of Appeal in Maricopa Co. Juv. Action No. JS-5209 &amp; No. JS-4963</i> 692 P.2d 1027, 1033 (Ariz. Ct. App., 1984)</p>	<p>"[U]nder our statute, a finding of mental illness or mental deficiency alone is not a justification for the termination of parental rights. . . . Rather, it must also be established by clear and convincing evidence that the mental illness or mental deficiency is such that it prevents the parent from discharging parental responsibilities."</p>
<p><b>Arkansas</b> <i>J.T. v. Ark. Dept. of Hum. Svcs.</i>, 947 S.W.2d 761, 767 (Ark., 1997)</p>	<p>Appellant's mental disability was a factor considered by the court, but only to the extent that the disability affected the child in a detrimental way. The court noted that it had in the past issued similar restrictions on visitation in cases where the parents had no identifiable disability, and also, that there had been cases when such restrictions were not necessary and where the parental rights were not terminated even though the parent had a disability such as mental illness.</p>

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<p><b>California</b> Cal. Welf. &amp; Inst. Code § 300(j)</p>	<p>[A] physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and. . . a court's determination. . . shall center upon whether a parent's disability prevents him or her from exercising care and control.</p>
<p>Cal. Welf. &amp; Inst. Code § 300(b)</p>	<p>Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of. . . the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.</p>
<p>Cal. Welf. &amp; Inst. Code § 361.5</p>	<p>A mental disability that renders him or her incapable of utilizing those services</p>
<p><i>Laurie S. v. Superior Court</i>, 31 Cal.Rptr.2d 506, 510-511 (Cal.App. 4 Dist., 1994)</p>	<p>At the pre-jurisdictional stage, an allegation by the Department that a parent is mentally ill or the fact of mental illness alone does not justify a psychological examination of that parent. By denying the allegations in the petition, the parent does not tender his or her mental state in issue. Only after a finding the child is at risk, and assumption of jurisdiction over the child, do a parent's liberty and privacy interests yield to the demonstrated need of child protection.</p>
<p><i>In Re David M.</i>, 36 Cal.Rptr.3d 411, 416 (Cal.App. 4 Dist., 2005)</p>	<p>Social Services Agency has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent.</p>
<p><b>Colorado</b> Colo. Rev. Stat. Ann. §19-3-604 (1)(b)(l)</p>	<p>The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence that the child is adjudicated dependent or neglected and the court finds that no appropriate treatment plan can be devised to address the unfitness of the parent or parents. 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 may be the basis for such a determination.</p>
<p><b>Connecticut</b> Conn. Gen. Stat. §46b-56(c)(12)</p>	<p>A disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child.</p>
<p><b>Delaware</b> 13 Del. Code Ann. §1103(a)(3)</p>	<p>Termination of parental rights may be initiated whenever it appears to be in the child's best interest and any person holding parental rights over such child are found by the Court to be mentally incompetent and, from evidence of two qualified psychiatrists selected by the Court, found to be unable to discharge parental responsibilities in the foreseeable future.</p>

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<p><b>District of Columbia</b> D.C. Code §16-2353(b)(2)</p>	<p>In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child.</p>
<p><b>Florida</b> <i>Leonard v. Myers</i>, 553 So.2d 291, 292 (Fla.App. 2 Dist., 1989)</p>	<p>Courts of this state hold that a natural parent should be denied custody of his child only where it is demonstrated that such custody will be detrimental to the welfare of the child or that the parent is disabled from exercising custody.</p>
<p><b>Georgia</b> <i>In Interest of C.D.C.</i>, 495 S.E.2d 872, 874 (Ga.App., 1998)</p>	<p>In cases in which the parent is unable to care for the child due to mental disability, the court must make the welfare of the children its paramount concern. In determining the best interest of the children, the court may consider the children's need for a stable home environment and the detrimental effects of prolonged foster care.</p>
<p>Ga. Code Ann. §15-11-94(b)(4)(B)(i)</p>	<p>In determining whether the child is without proper parental care and control, the court shall consider a medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child.</p>
<p><b>Hawaii</b> Haw. Rev. Stat. §587-25</p>	<p>The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator, and other appropriate family members who are parties shall be fully considered when determining whether the child's family is willing and able to provide the child with a safe family home.</p>
<p><b>Idaho</b> Idaho Code Ann. §15-5-204</p>	<p>In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian so long as the potential guardian is otherwise suitable.</p>
<p>Idaho Code Ann. §16.2005</p>	<p>If the parent has a disability, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child</p>
<p><b>Illinois</b> 750 Ill. Comp. Stat. §50/1(D)(p)</p>	<p>Grounds for unfitness may include inability to discharge parental responsibilities supported by competent evidence of mental impairment, illness, or retardation or developmental disability, with sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period.</p>
<p><b>Indiana</b> <i>Clark v. Madden</i>, 725 N.E.2d 100, 105 (Ind. App., 2000)</p>	<p>A trial court must examine the parent's "actual and potential physical capabilities, learn how he or she has adapted to the disability and manages its problems, consider how the other members of the household have adjusted thereto, and take into account the special contributions the person may make to the family despite-or even because of-the handicap.</p>

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<p><b>Iowa</b> Iowa Code §232.2 (6)(n)</p>	<p>“Child in need of assistance” means an unmarried child. . . Whose parent's or guardian's mental capacity or condition. . . , or drug or alcohol abuse results in the child not receiving adequate care.</p>
<p><b>Kansas</b> Kan. Stat. Ann. §38-2201</p>	<p>The disability of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the disability and harm to the child</p>
<p><b>Kentucky</b> Ky. Rev. Stat. Ann. §610.127(6)</p>	<p>Reasonable efforts to enable the child to safely live at home shall not be required if a court determines that the parent has Mental illness, retardation or other developmental disability that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for 12 months.</p>
<p>Ky. Rev. Stat. Ann. §625.090(3)(a)</p>	<p>In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider Mental illness or retardation of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time.</p>
<p><b>Louisiana</b> <i>State in Interest of B.K.F.</i>, 704 So.2d 314, 317 (La. App. 5 Cir.,1997).</p>	<p>[T]ermination of parental rights proceedings are not “services, programs or activities” within the meaning of the ADA. Accordingly, we hold that the ADA may <i>not</i> be used as a <i>defense</i> in a <i>parental rights termination</i> case.</p>
<p><b>Maine</b> None</p>	
<p><b>Maryland</b> <i>In Re Adoption/Guardianship Nos. J9610436 and J9711031</i>, 796 A.2d 778, 783 (Md., 2002)</p>	<p>[W]hen attempting to comply with the Adoption and Safe Families Act of 1997, agencies and the courts, must, at the least, recognize that Congress has also expressed a concern that extra steps be taken to insure that the disabled are not subject to discrimination, however inadvertent. . . . “Neglect” implies, generally, a deliberate or knowing neglect.</p>
<p><b>Massachusetts</b> <i>Pet. of Dept. of Public Welfare to Dispense With Consent to Adoption</i>, 421 N.E.2d 28, 38 (Mass., 1981)</p>	<p>[N]atural parents may not be deprived of the custody of their minor children in the absence of a showing that they “have grievous shortcomings or handicaps that would put the child's welfare in the family milieu much at hazard,”</p>
<p><b>Michigan</b> <i>In Re Mcintosh</i>, 2003 WL 21675842, (Mich.App., 2003)</p>	<p>[W]hile the ADA requires a public agency such as the FIA to make reasonable accommodations for persons with disabilities so that they can receive the benefits of public programs, “a parent may not raise violations of the ADA as a defense to termination of parental rights.”</p>
<p><i>In Re Terry</i>, 610 N.W.2d 563,</p>	<p>After her children have come within the jurisdiction of the family court, a parent,</p>

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571 (Mich.App., 2000)	whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care.
<b>Minnesota</b> Minn. Stat. §363A.03 Subd. 1(a)(9)	[D]isability. . . of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
<b>Mississippi</b> <i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss.1983)	The Supreme Court has instructed chancellors, when making custody decisions, to consider the age, health and sex of the child, the continuity of care prior to the separation, parenting skills and willingness to provide primary child care, employment and responsibilities, <i>physical and mental health</i> and age of the parents, emotional ties of parent and child, moral fitness of parents, the home, school and community, the preference of the child, stability of the home, employment of each parent, and other factors relevant to the parent-child relationship. <i>One individual factor should not carry any greater weight than the others.</i> [emphasis added]
<b>Missouri</b> Mo. Rev. Stat. §211.447(5)(2)(a)	The juvenile officer or the division may file a petition to terminate parental rights when it appears that the child has been abused or neglected. In determining whether to terminate parental rights, the court shall consider and make findings on mental condition shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control.
<b>Nebraska</b> None	
<b>Nevada</b> None	
<b>New Hampshire</b> N.H. Rev. Stat. Ann. §170-C:5(IV)	The petition for Termination of the Parent-Child Relationship may be granted where the court finds that the parent is and will continue to be incapable of giving the child proper parental care and protection for a longer period of time than would be wise or prudent because of mental deficiency or mental illness. Mental deficiency or mental illness shall be established by the testimony of either 2 licensed psychiatrists or clinical psychologists or one of each acting together.
<b>New Jersey</b> <i>Div. of Youth and Fam. Svcs. v. A.G.</i> , 782 A.2d 458, 471-73 (N.J.Super.A.D., 2001)	[N]either of the parents were morally culpable or blameworthy; it was their mental disabilities which rendered them unable to parent. . . . [T]o allow the provisions of [legislation against discrimination on the basis of disability to constitute a defense to a termination proceeding would improperly elevate the rights of the parent above those of the child.
<b>New Mexico</b> <i>State Ex Rel. Children, Youth &amp; Families Dept. v. John D.</i> , 934 P.2d 308, 314 (N.M.App., 1997)	[T]he Department is not required to prove the reasonableness of its efforts to assist a parent when parental rights are terminated [for presumptive abandonment], as opposed to. . . abuse and neglect, which does so require. The ADA, however, might indeed apply in the context of. . . abandonment to the extent that Mother could establish a violation of the ADA in the rebuttal of any evidence establishing Mother's presumptive abandonment. That is, the ADA's provisions could be used to argue that the Department violated the ADA and as a result the parent lacked responsibility for

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	the destruction of the parent-child relationship.
<p><b>New York</b> <i>Breiterman v. Breiterman</i>, 239 A.D. 2d 712, 713 (1997)</p>	[I]t is clear that [a handicapping] condition alone cannot be grounds to deny custody to an otherwise qualified parent.
<p><b>North Carolina</b> N.C. Gen. Stat. §7B-1111(a)(6)</p>	The court may terminate the parental rights upon a finding that the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile. . . and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability. . . may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, [etc., without] an appropriate alternative child care arrangement.
<p><b>North Dakota</b> N.D. Cent. Code §§ 27-20-32.2; 27-20-02</p>	Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of: (1) One year; or (2) One half of the child's lifetime, measured in days, as of the date of the petition alleging aggravated circumstances is filed
<p><i>Waagen v. R.J.B.</i>, 248 N.W.2d 815, 820 (N.D. 1976)</p>	[A]cceptance of treatment for mental illness or emotional problems by a parent does not automatically render a child deprived.
<p><b>Ohio</b> None</p>	
<p><b>Oklahoma</b> 10 Okla. Stat. § 7006-1.1(A)(13)</p>	[A] finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his or her parental rights
<p><b>Oregon</b> None</p>	
<p><b>Pennsylvania</b> None</p>	
<p><b>Puerto Rico</b> 8 P.R. Laws Ann. § 447s(2)(a)</p>	No reasonable efforts to ensure the wellbeing and full protection of the minor and to preserve the integrity of the family shall be made prior to the removal of a minor from his or her home if a father, mother, or person responsible for the minor suffers from some mental disability or defect, and the condition is irreversible and of such a magnitude that it prevents the person from caring properly for the minor and ensuring his or her safety and physical, mental, emotional and/or sexual integrity.
<p><b>Rhode Island</b> None</p>	
<p><b>South Carolina</b> None</p>	
<p><b>South Dakota</b> <i>Arneson v. Arneson</i>, 670 N.W.2d</p>	When faced with a parent's disability in a custody dispute, the judge should consider: (1) the person's actual and potential physical capabilities; (2) how the parent has managed and adapted to the disability; (3) how the other members of the household have adjusted to it; and (4) "the special contributions the person may make to the

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904, 912 (S.D.,2003)	family despite, or even because of, the handicap.”
<b>Tennessee</b> None	
<b>Texas</b> Tex.Fam.Code Ann. §161.003(a)	The court may order termination of the parent-child relationship. . . if. . . : the parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the. . . needs of the child; the illness. . . will [probably] continue to render the parent unable to provide for the child's needs until the [child's] 18th birthday. . . ; the department has been. . . conservator of the child. . . at least six months [prior to the termination hearing]; the department has made reasonable efforts to return the child to the parent; and the termination is in the best interest of the child.
<b>Utah</b> Utah Code Ann. §78A-6-302	A court may not remove a child from the parent's or guardian's custody on the basis of: (b) mental illness or poverty of the parent or guardian; or (c) disability of the parent or guardian, as defined in Section 57-21-2
<b>Vermont</b> <i>In Re B.S.</i> , 693 A.2d 716, 720 (Vt., 1997)	Mental retardation is not, by itself, a ground for terminating parental rights.
<b>Virginia</b> <i>Wright v. Alexandria Div. of Soc. Svcs.</i> , 433 S.E.2d 500, 503 (Va.App.,1993) (citing Va. Code Ann. §16.1-283(B)(2)(a))	[I]t shall constitute prima facie evidence of abuse or neglect if the parent suffers from a mental or emotional illness or mental deficiency of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his or her age and state of development.
<b>Washington</b> Wash. Rev. Code §13.34.180(1)(e), (f)	In determining whether the conditions will be remedied the court may consider psychological incapacity or mental deficiency or use of substances that render the parent incapable of providing proper care, and documented unwillingness to receive and complete treatment or documented multiple failed treatment attempts; and continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.
<b>West Virginia</b> None	
<b>Wisconsin</b> None	
<b>Wyoming</b> None	