

Policy Research Brief

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“No Right is More Precious”: Voting Rights and People with Intellectual and Developmental Disabilities

This Policy Research Brief reviews U.S. laws that impact, and present barriers to, the exercise of voting rights by persons with intellectual and developmental disabilities. It is authored by Kay Schriener, Ph.D., and Lisa Ochs, Ph.D., J.D. Dr. Schriener is Research Professor, Department of Political Science, and Research Fellow, Fulbright Institute of International Relations, at the University of Arkansas, Fayetteville; she is also principal investigator of The Empowerment Project, a research project on registration and voting laws affecting people with disabilities, funded by the National Institute on Disability and Rehabilitation Research, U.S. Department of Education (H133G990188). Dr. Ochs is Assistant Professor in the Department of Counseling and Psychology, Arkansas State University, Jonesboro. For further information contact Dr. Schriener at (501) 575-6417 or by e-mail at kays@comp.uark.edu. The opinions expressed are those of the authors and do not necessarily reflect the position of the U.S. Department of Education.

■ Introduction

The self-determination philosophy calls for the active participation of people with intellectual and developmental disabilities in the civic life of their communities and country. They are being encouraged to help their preferred candidates run for office, communicate their opinions to elected officials, take part in disability advocacy organizations – and vote. At times, however, election laws present obstacles to voting. In many parts of this nation, state law permits some individuals with intellectual and developmental disabilities to lose their right to vote because they have been adjudicated “mentally incompetent” or are under guardianship. These laws not only prevent them from voting, but present a powerful symbolic barrier to full citizenship for people with disabilities.

In this review, we will first briefly describe the state laws that disenfranchise individuals with intellectual and developmental disabilities. This information should be of use to those who are interested in promoting opportunities for the involvement of this population in democratic governance. Second, we will put these laws into historical context to underscore their similarities to voting prohibitions based on gender, race, and other historically devalued statuses. Finally, we will discuss the legal and political implications of the laws.

■ Relevant State Voting Rights Laws

The voting rights laws affecting people with intellectual and developmental disabilities are found in state constitutions and in state statutes governing electoral qualifications, mental retardation and developmental disabilities rights and services, mental health law, and guardianship/conservatorship. Forty-four states have disenfranchisement provisions in either their constitutions or their statutes. Only Colorado, Indiana, Kansas, Michigan, New Hampshire, and Pennsylvania do not have disenfranchising provisions in either their constitutions or statutes.

Many states allow or require persons under guardianship/conservatorship to be prohibited from voting, either in their constitutions or statutes (for more detailed information, see table in Appendix A). Also, many states, typically in their constitutions, use such terms as “idiots,” “lunatic,”

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Table 1: States Using Outdated Language in Constitutions or Statutes

• Alaska: “unsound mind”	• Montana: “unsound mind”
• Arizona: “non compos mentis, insane, adjudicated an incapacitated person”	• Nebraska: “non compos mentis”
• Arkansas: “idiot or insane person”	• Nevada: “idiot or insane person”
• Delaware: “idiot or insane person”	• New Jersey: “idiot or insane person”
• Hawaii: “non compos mentis”	• New Mexico: “idiots” and “insane persons”
• Iowa: “idiot or insane person”	• Ohio: “idiot or insane person”
• Kentucky: “idiots and insane persons”	• Rhode Island: “non compos mentis”
• Minnesota: “insane”	• Vermont: “not of a quiet and peaceable behavior”
• Mississippi: “idiots and insane persons”	

“insane,” “non compos mentis,” of “unsound mind,” or some other outdated language in reference to persons with intellectual and developmental disabilities; sometimes there is more than one of these terms used in the same state (see Table 1). The existence of these laws raises many questions. Among them are when and why were they adopted, and what are their implications for the self-determination of people with intellectual and developmental disabilities?¹

■ Voting Rights: A (Very) Brief History

American history is rife with debates and conflicts over voting rights. When the colonies were established, it was common to specify the qualifications for electors in terms of property ownership. This practice obviated the need for more specificity. As Porter notes, “[s]uch undesirable persons as paupers, idiots, the insane, etc., were practically excluded by the property test, and the need for specifically disqualifying them did not appear until the property test was gone” (Porter, 1918, pp. 20-21). Women, African Americans, and other persons considered inferior were not typically addressed in electoral qualification law, since social convention was so strong that these individuals rarely appeared at the polls even if they owned the required

¹ In this article, we will focus on state constitutions. Because of space constraints, we will not describe in more detail the statutory provisions that limit voting rights in some states. It is important to note, however, that while 36 states disenfranchise some individuals with disabilities in their *constitutions*, other states do so in their statutes (see table in Appendix A).

amount of property (McKinley, 1905, pp. 35-37). Over time, the colonies (and later, states) began to use a tax-paying qualification either in addition to, or as a substitute for, the property-owning qualification. Adult males who had paid taxes voted freely, and generally others did not even try (Rogers, 1992, p. 3).

During the nineteenth century, states implemented a number of categorical exclusions, which included women, African Americans, immigrants, paupers, criminals, and people with some kinds of impairments. However, there were also contrary forces that emphasized the importance of voting rights for some of these groups. Those for and against voting rights, particularly for African Americans and women, fought contentious battles throughout the second half of the nineteenth and much of the twentieth centuries. Eventual triumphs of the woman suffrage, abolitionist, and civil rights movements resulted in the significant victories of the Nineteenth Amendment, the Civil War amendments, and the more contemporary Voting Rights Act. These laws established the right of these groups to participate as equal partners in American representative government.

As political rights were being won in the legislature, the courts also began to have a more expansive view of voting. In a long line of opinions, the U.S. Supreme Court has developed its contemporary view that the right to vote is not to be abridged by the states except in rare circumstances. In *Wesberry v. Sanders*, for example, the court declared that:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. (*Wesberry v. Sanders*, 376 U.S. 1, 17-18 [1964])

■ Disability-Based Disenfranchisement

Theoretically, the political and legal transformation of voting from a privilege to a fundamental right is now complete. However, there is a long history of state-sponsored discrimination in voting rights laws affecting individuals with disabilities, beginning in the nineteenth century. A review of state constitutions illustrates this history. Before 1820, only two state constitutions (Maine, “under guardianship”; and Vermont, not “quiet and peaceable”) contained language disenfranchising individuals on the basis of disability, but more states adopted such measures in subsequent decades. Massachusetts adopted its constitutional prohibition (“under guardianship”) in 1821, Virginia disqualified “persons of unsound mind” in 1830, and Delaware began to prohibit voting by “idiots” and “insane persons” in 1831.

Between 1840 and 1860, many states adopted such provisions, either when joining the Union or by constitutional amendment. By 1860, California, Delaware, Iowa, Louisiana, Maryland, Minnesota, New Jersey, Ohio, Oregon, Rhode Island, Virginia, and Wisconsin had joined in excluding citizens from voting because of disability.

By 1880, 11 more states (Alabama, Arkansas, Florida, Georgia, Kansas, Mississippi, Nebraska, Nevada, South Carolina, Texas, and West Virginia) adopted constitutional provisions prohibiting voting by some individuals with disabilities. Most of these were Southern states which wrote disenfranchising language into their new constitutions following the Civil War.

After 1880, Alaska (1959), Arizona (1912), Hawaii (1959), Idaho (1890), Montana (1889), New Mexico (1912), North Dakota (1889), Oklahoma (1907), South Dakota (1889), Utah (1896), Washington (1889), and Wyoming (1890) entered the Union with constitutions disenfranchising people on the basis of disability. Kentucky amended its constitution to include a prohibition against voting by “idiots and insane persons” in 1891, and Missouri did so in 1945.

As is apparent in Table 2, the percentage of states with such provisions dramatically increased during the middle of the nineteenth century. This increase was a function of (a) states entering the Union with disenfranchising language and (b) states amending their constitutions to adopt exclusions.

Only a very few states have dropped exclusionary constitutional language once adopted. Kansas once prohibited voting by “persons under guardianship, non compos mentis, or insane” (1859), but in 1974 amended its constitution to provide only that the legislature may exclude persons from voting because of mental illness. Louisiana constitutionally required the disenfranchisement of persons under interdiction (guardianship) and “idiots and insane persons” (or “persons notoriously insane or idiotic”) from voting from 1845 until 1974 when the constitution was amended to *permit* the disqualification. Similarly, Oklahoma prohibited

Table 2: Numbers and Percentages of States in the Union with Constitutional Disenfranchising Provisions

Year	# of states in Union	# and % with constitutional disenfranchising provisions
1820	23	2 (.9%)
1840	26	5 (19%)
1860	33	15 (45%)
1880	38	26 (68%)
1900	45	34 (76%)
1920	48	37 (77%)
1940	48	39 (81%)
1960	50	39 (78%)
1980	50	36 (72%)
2000	50	35 (70%)

“any idiot or lunatic” from voting in its 1907 constitution, but amended the constitution in 1978 to provide only that the legislature may prescribe who may vote. Most recently, in 1998 Idaho repealed its prohibition on voting by people “under guardianship, idiotic or insane.”

■ Justifications for a Disability Exclusion

Why did the states adopt laws restricting access to the polling place for people with disabilities? Based on our research thus far, it appears that states developed these laws for two major reasons. First, the citizenry and political elite in various states believed they needed to ensure that the electorate was morally and intellectually competent to participate in representative government. Debate raged about the abilities of women, African Americans, Native Americans, and other groups to vote intelligently and independently. Opponents claimed that some individuals were by nature incapable of taking part in democratic self-governance while proponents argued that there were no innate differences, only differences in experience and preparation. While this debate focused much more on African Americans and women, it seems quite probable that the states’ adoption of disability-based exclusions reflected opinions that people labeled “idiots” and “insane” (or those under guardianship or labeled “incapacitated” or “incompetent”) could not be trusted to vote.

Second, “idiocy” and “insanity” began to be recognized as a social and political problem during the nineteenth century. States funded the establishment of “idiot schools” and “insane asylums,” created commissions to provide advice to the legislatures regarding disability policy, and established agencies with oversight responsibility for disability policy (Grob, 1973; Grob, 1983; Noll, 1995; Trent, 1994). These policy responses were shaped by the nascent professions devoted to providing care and treatment for – and control of – persons labeled “idiots” or “insane.” Between the mid-nineteenth century and the early twentieth century, “idiocy” and “insanity” were viewed with a combination of pity, concern, and, increasingly, fear as they were paired with social disorder, deviancy, and criminality. It is unlikely that these portrayals of people with intellectual and developmental disabilities did not affect the perceptions of the public and policymakers as laws were created governing the right to vote.

These laws were justified presumably because “idiots” and “insane persons” (and those under guardianship or labeled “incompetent”) were believed to be incapable of participating. They were viewed as incapable of engaging in the reasoned, complex thinking necessary for making political judgements. They could not acquire and weigh information about the qualifications of candidates for elected office and the relative merits of their positions on matters of public policy. Democracy was too complicated for “simple” and “demented” minds. Also, it is probable that these individuals were thought to be morally deficient as well as intellectually inferior. Such individuals were viewed as neither intellectually *nor* morally fit to participate as equals in democratic self-governance.

Further, many people probably thought it unnecessary for these individuals to participate. Others could, and should, represent them. Others could be their legitimate proxies in the political process. Other citizens could be their political guardians. By resting the authority for their political representation in others, lawmakers could protect the common good and at the same time provide for care and treatment of the most “unfortunate” members of society. Some people with disabilities – just as with women, African Americans, immigrants, and other groups – were targeted because of unfounded presumptions about their capacities and the threats they posed to the social and political order.

■ Federal Voting Rights Laws

In this century, federal law has established important protections against disability-based discrimination. Three federal laws address voting rights for people with disabilities. The Voting Rights Act of 1965 (as amended in 1982) requires that individuals who are blind or have other disabilities “may be given assistance by a person of the

voter’s choice, other than the voter’s employer or agent of that employer or agent of the voter’s union.” The Voting Accessibility for the Elderly and Handicapped Act of 1984 guarantees the right to vote in federal elections, but defines persons with disabilities narrowly, as persons with a “temporary or permanent physical disability.” Such individuals must be provided with auxiliary aids (defined as “instructions, printed in large type...” and “information by telecommunications devices for the deaf”).

The Americans with Disabilities Act (ADA) also addresses voting. Title II of the ADA requires that all public entities make “reasonable modifications to rules, policies, and practices” to avoid disability-based discrimination in programs, services, and activities of state and local governments. These protections apply to otherwise qualified persons with disabilities, who are defined as persons who “with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, [meet] the essential eligibility requirements” of the program, services, or activity (Americans with Disabilities Act of 1990).

In practice, the federal voting rights laws have affected primarily persons who are blind or who have mobility impairments. The application of the ADA’s anti-discrimination protections in the voting rights context has been disappointing because of interpretations that the ADA does not require state officials to ensure secret ballots for blind individuals or ensure that all polling places are accessible (Schriner, Batavia, & Shields, in press). Most importantly for this discussion, we have not found any challenge to the state laws discussed here based in the ADA.

Taken together, the federal voting rights laws represent an important policy stance regarding the necessity of ensuring that people with disabilities take part in the electoral process. However, when viewed alongside the state laws that disenfranchise many individuals with intellectual and developmental disabilities, we see the ambivalence with which our society views their political participation:

With respect to voting rights...federal policymakers have taken a narrow approach that does not draw out all of the implications of the minority group model. Federal law acknowledges the physical and communication barriers that affect electoral participation, but fails to appreciate the implications of state policies which exclude people based on perceived incompetence of individuals with cognitive and emotional impairments. In addressing the issue of physical accessibility, Congress has required states to take some steps toward ensuring that voters with disabilities will not experience accessibility barriers...and while these laws are flawed in several serious ways, they nonetheless indicate Congress’ willingness to view voting as...a fundamental right of people with physical disabilities. There has been no such willingness with respect to

the voting rights with emotional and cognitive impairment. In fact, the [National Voter Registration Act, which requires agencies primarily engaged in serving people with disabilities, and which receive state funds, to provide voter registration services to their consumers] specifically allows states to continue disenfranchising individuals “by reason of criminal conviction or mental incapacity.” Though federal laws emphasizing the voting rights of people with disabilities appear on their face to be progressive implements for ensuring equality, they also outline the contradictions in the disability construct by omitting some people with disabilities from their protections. (Schriner, Ochs, & Shields, 2000).

■ Implications of State Laws

The conflict between federal and state voting rights laws affecting people with disabilities, and the onerous nature of the state exclusions, present significant legal and political issues. From a legal standpoint, the state exclusions raise serious constitutional questions. While the states generally have the prerogative of establishing qualifications of the electorate, voting is a *fundamental right*. Thus, any severe abrogation of the right to vote would be subject to a strict scrutiny test, in which the state would have to show how the infringement on the right to vote is necessary to achieve a compelling state interest. The state would have to demonstrate that the exclusion is not under- or over-inclusive (that is, that it reaches everyone who should be excluded, and does not exclude anyone who should not be). We would argue that states cannot demonstrate that these exclusions (a) are necessary to meet a compelling state interest, and (b) are sufficiently narrowly-tailored to the state interest at stake (for a complete analysis, see Schriner, Ochs, & Shields, 1997). There are other measures available to the states (such as anti-fraud and anti-bribery laws, and an objective test of competence applied to *everyone* at the time they register) to ensure that the electoral process is not abused by those who would take advantage of the inability of some persons (such as those with severe intellectual impairments) to participate.

Politically, the states’ exclusions of some citizens based on their having been labeled as having a disability is troubling. These laws are apparently based on misunderstandings, myths, and prejudices about the people being targeted. As we have argued elsewhere:

This prejudice was as pronounced in the case of people with mental impairments as it was for women, blacks, immigrants, and certain religious groups. Thus, in the nineteenth century, states adopted disability-based provisions that were consistent with other individual characteristics identifying those who would be disenfran-

chised. The emergence of this category in electoral law began to crystallize the political implications of disability-related prejudice. People with intellectual and emotional impairments – idiots and insane people – would be separated in the electorate just as they were increasingly separated in society. (Schriner, Ochs, & Shields, in press)

Given our nation’s history of contentious politics over the voting rights of other groups, it is ironic that so little critical attention has been paid to these disability-based exclusions. Voting is the ultimate act of American citizenship. Voting makes one a member of the political community. The act of voting gives voice to the needs and concerns of the voter, but also expresses the voter’s perspectives about what constitutes the common good. Politically, electoral participation is necessary to ensure that those elected know whom they are representing.

The disability rights movement has made significant policy gains in recent decades, but in the future, disability policy is likely to be more contentious and divisive. To defend its gains and continue to achieve policy objectives, citizens with disabilities must begin to participate in the electoral process at a greater rate. Now, the voting rate of persons with disabilities is 14-21 percentage points lower than that of nondisabled citizens (Kruse, Schriner, Schur, & Shields, 1999; Shields, Schriner, & Schriner, 1998). If the disability community is to make further progress in improving the lives of people with disabilities, people with disabilities themselves must have a greater voice at the ballot box.

The self-determination movement represents a key strategy in bringing the concerns of people with intellectual and developmental disabilities to the attention of candidates and elected officials. In many states, the ability of these individuals to vote is thwarted by antiquated ideas and unnecessary laws that subject them to more stringent voting-related competency tests and standards than are applied to others. To many, democracy is inaccessible. Policymakers in states with such laws should be encouraged to make the changes necessary to ensure the equal voting rights of people with disabilities.

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■ Appendix A: Table

Summary of Current Constitutional and Statutory Disenfranchising Language

State	Constitutional Disqualification	Statutory Disqualification
Alabama	No person...who is mentally incompetent, shall be qualified to vote until...removal of disability. Ala. Const. art. VIII, § 182 (Michie Supp. 1999)	Any person possessing the qualifications of an elector set out in Article 8 of the Constitution of Alabama, as modified by federal law, and not laboring under any disqualification listed therein, shall be an elector, and shall be entitled to register and to vote at any election by the people. Ala. Code § 17-3-9 (Michie 1995)
Alaska	No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed. Alaska Const. Art. V, § 2 (Michie 1998)	Disenfranchising statute, § 15.05.040, repealed. (Michie Supp. 1999)
Arizona	No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election... Ariz. Const. Art. 7, § 2 (West 1984)	Has not been adjudicated an incapacitated person as defined in section 14-5101. Ariz. Rev. Stat. § 16-101(A)(6) (West 1999).
Arkansas	No idiot or insane person shall be entitled to the privileges of an elector. Ark. Const. Art. 3 § 5 (Michie 1987)	“Qualified elector” means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51. Ark. Stat. Ann. § 7-1-101(20) (West Supp. 1999) No guardian shall make any of the following decisions without filing a petition and receiving express court approval...Prohibit the incapacitated person from voting. Ark. Stat. Ann. § 28-65-302(a)(5) (West 1987)
California	The Legislature...shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. Cal. Const. Art. 2, § 4 (West 1983)	(a) A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and any of the following apply: (1) A conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code. (2) A conservator for the person or the person and estate is appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. (3) A conservator is appointed for the person pursuant to proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person’s trial or judgment has been suspended pursuant to Section 1370 of the Penal Code. (4) A person has pled not guilty by reason of insanity, has been found to be not guilty pursuant to Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as

Summary of Current Constitutional and Statutory Disenfranchising Language, page 2

State	Constitutional Disqualification	Statutory Disqualification
California, cont.		<p>defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.</p> <p>(b) If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously find that the person is not capable of completing an affidavit of voter registration before the person shall be disqualified from voting. Cal. Elec. Code § 2208(a) (West Supp. 2000)</p> <p>If the court determines the conservatee is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code, the court shall by order disqualify the conservatee from voting pursuant to Section 2208 or 2209 of the Elections Code Cal. Prob. Code § 1910 (Supp. 2000)</p>
Colorado	No Constitutional disqualification (West 1990, Supp. 1999)	No electoral statute
Connecticut	The qualifications of electors as set forth in Section 1 of this article shall be decided at such times and in such manner as may be prescribed by law. Conn. Const. Art. 6, § 2 (West 1988)	No mentally incompetent person shall be admitted as an elector. Conn. Gen. Stat. § 9-12(a) (West Supp. 1999)
Delaware	No idiot or insane person...shall enjoy the right of an elector. Del. Const. Art. 5, § 2. (Michie 1999)	No idiot or insane person...shall be a qualified voter. 15 Del. Code Ann. § 1701 (Michie 1999)
Florida	No person...adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote... until...removal of disability. Fla. Const. Art. 6 § 4(a) (West 1995)	<p>A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law. Fla. Stat. § 97.041(2)(a) (West Supp. 2000)</p> <p>Rights that may be removed from a person by an order determining incapacity include the right...[t]o vote. Fla. Stat. § 744.3215(2)(b) (West Supp. 1997)</p> <p>The committee's written report must include...[a]n evaluation of the alleged incapacitated persons' ability to retain her or his rights, including, without limitation, the rights...[to] vote.... Fla. Stat. § 744.331(3)(d)(2) (West Supp. 1997)</p>
Georgia	No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed. Art. 2, § 1, ¶ III(b) (Michie 1998)	<p>No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed. Ga. Code Ann. § 21-2-216(b) (Michie Supp. 1999)</p> <p>Subject to the provisions of law relating...the right to vote, which matters shall be independently determined, all persons for whom guardians are appointed shall retain the</p>

Summary of Current Constitutional and Statutory Disenfranchising Language, page 3

State	Constitutional Disqualification	Statutory Disqualification
Georgia, cont.		powers, rights, and privileges not removed from the ward pursuant to this chapter. This subsection, however, shall not prevent the court from specifically removing from the ward powers, rights, and privileges other than those specified in subsections (d) and (e) of this Code section. Ga. Code Ann. § 29-5-7(f) (Michie 1999)
Hawaii	No person who is non compos mentis shall be qualified to vote. Haw. Const. Art. 2, § 2 (Michie 1993)	Whenever the clerk receives from the department of health or any informing agency, information of the...adjudication as an incapacitated person under the provisions of chapter 560, a mentally retarded person under the provisions of chapter 333F...the clerk shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person...incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting...the clerk shall remove the name of the person from the register. Haw. Rev. Stat. § 11-23(a) (Michie 1998)
Idaho	Removed disenfranchising provision, Idaho Code Const. Art. VI, § 3, stating people under guardianship, idiotic or insane could not vote in 1998. (Michie Supp. 1999)	Every developmentally disabled person has the following rights...unless limited by prior court order, to exercise all civil rights, including the right to...vote. Idaho Code §66-412(3)(j) (Michie 1996)
Illinois	Insane via caselaw not overruled by Const. Art. 3, § 1. Const. Commentary (West 1993) (West's Smith-Hurd Illinois Compiled Statutes Annotated, Constitution of the State of Illinois, Articles 2 to End, p. 54)	No electoral statute disqualification. (Michie 1996; Supp. 1999)
Indiana	No Constitutional disqualification. (Michie 1997, Supp. 1999)	No electoral statute disqualification. (Michie 1996, Supp. 1999)
Iowa	No idiot, or insane person...shall be entitled to the privilege of an elector. Iowa Const. Art. 2, § 5 (West 1989)	A person who has been legally determined to be mentally incompetent. Certification by the clerk of the district court that any such person has been found no longer incompetent by a court shall qualify such person to again be an elector, subject to the other provisions of this chapter. Iowa Code § 48A.6(2) (West 1999)
Kansas	The legislature may, by law, exclude persons from voting because of mental illness. Ks. Const. art 5, § 2 (Division of Printing, Department of Administration, 1988)	No electoral statute disqualification. (Division of Printing, Department of Administration, 1996, Supp. 2000)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 4

State	Constitutional Disqualification	Statutory Disqualification
Kentucky	The following persons are excepted and shall not have the right to vote... Idiots and insane persons. Ky. Const. § 145(3). (Michie 1988)	<p>Disqualified under Ky. Const. § 145. Ky. Rev. Stat. § 116.025(1). (Michie Supp. 1998)</p> <p>The rights of which a ward is legally deprived upon a determination of disability in managing his personal affairs and financial resources include, but are not limited to, the right to vote....Ky Rev. Stat. § 387.590(10) (Michie 1984)</p> <p>A partially disabled or disabled person for whom a limited guardian, limited conservatorship, or conservator has been appointed retains all legal and civil rights except those which have by court order been designated as legal disabilities or which have been specifically granted to the limited guardian, limited conservator, or conservator. A person who is partially disabled may be subject to some but not all of the disabilities specified in subsection (10) of this section. Ky. Rev. Stat. § 387.590(11) (Michie 1984)</p>
Louisiana	Right may be suspended while a person is interdicted and judicially declared mentally incompetent. La. Const. Art. 1, § 10(A) (West 1996)	No person shall be permitted to register or vote who is... interdicted after being judicially declared to be mentally incompetent. La. Rev. Stat. Ann. § 18:102(2) (West Supp. 2000)
Maine	Persons under guardianship for reasons of mental illness. Me. Const. Art II, § 1 (West Supp. 1999)	A person under guardianship because of mental illness may not register or vote in any election, as provided in the Constitution of Maine, Article II, Section 1. Me. Rev. Stat. Ann. tit. 21A § 115(1) (West 1999).
Maryland	The General Assembly by law may regulate or prohibit the right to vote of a person...under care or guardianship for mental disability. Md. Const. Art 1, § 4 (Michie 1981)	An individual is not qualified to be a registered voter if the individual...is under guardianship for mental disability. Elec. 3-102(b)(2) (Michie 1997)
Massachusetts	Persons under guardianship. Mass. Const. Amend. Art. III (Law Co-op 1979)	Not being a person under guardianship. Mass. Ann. Laws ch. 51 § 1 (Law Co-op 1990)
Michigan	The legislature may by law exclude persons from voting because of mental incompetence. Mich. Const. Art. 2, § 2 (West 1985)	No electoral statute disqualification. (West 1989, Supp. 1999)
Minnesota	The following persons shall not be entitled or permitted to vote at any election in this state:...a person under guardianship, or a person who is insane or not mentally competent. Minn. Const. Art. VII, § 1 (West 1976)	The following individuals are not eligible to vote. Any individual...under a guardianship of the person; or found by a court of law to be legally incompetent. Minn Stat. § § 201.014(2)(b)(c) (West 1992)
Mississippi	Idiots and insane persons. Miss. Const. Art. 12, § 241 (Law Co-op Supp. 1999)	Idiots and insane persons. Miss. Code Ann. § 23-15-11 (Law Co-op 1990)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 5

State	Constitutional Disqualification	Statutory Disqualification
Missouri	No person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote. Mo. Const. Art. VIII, § 2 (West 1995)	No person who is adjudged incapacitated shall be entitled to register or vote. Mo. Ann. State § 115.133(2) (West Supp. 2000)
Montana	Is of unsound mind, as determined by a court. Mont. Const. Art. IV, § 2 (Mont. Legislative Service 1999)	No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law. Mont. Code Ann. § 13-1-111(3) (Montana Legislative Service 1999)
Nebraska	No person shall be qualified to vote who is non compos mentis...unless restored to civil rights. Ne. Const. art. VI, § 2. (Revisor of Statutes 1995)	No person shall be qualified to vote or to register to vote who is non compos mentis...unless restored to civil rights. Neb. Rev. Stat. Ann. § 32-313(1) (Revisor of Statutes, 1998)
Nevada	No idiot or insane person shall be entitled to the privilege of an elector. Nev. Const. Art. 2, § 1. (Legislative Council, State of Nevada, 1999)	No person admitted to a public or private mental health facility pursuant to this chapter shall, by reason of such admission, be denied the right to...vote...unless such person has been specifically adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. Nev. Rev. Stat. Ann. § 433A.460(1) (Legislative Council, State of Nevada, 1995)
New Hampshire	No Constitutional disqualification. (Michie 1988, Supp. 1999)	No electoral statute disqualification. (Michie 1996, Supp. 1999)
New Jersey	No idiot or insane person shall enjoy the right of suffrage. N.J. Const. Art 2, § 6. (West Supp. 1999)	No person shall have the right of suffrage...who is an idiot or is insane. N.J. Stat. Ann. § 19:4-1(1) (West 1999)
New Mexico	Except idiots, insane persons. N.M. Const. Art. 7, § 1 (Michie 1992)	"Qualified elector" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States. N.M. Stat. Ann. § 1-1-4 (Michie 1995)
New York	Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters. N.Y. Const. Art. 2, § 5 (West Supp. 2000)	No person who has been adjudged incompetent by order of a court of competent judicial authority shall have the right to register for or vote at any election in this state unless thereafter he shall have been adjudged competent pursuant to law. N.Y. Elec. Law § 5-106(6) (West 1998)
North Carolina	No Constitutional disqualification. (Michie 1999)	Except as otherwise provided in this Chapter, each adult client of a facility keeps the same right as any other citizen of North Carolina to exercise all civil rights, including the right to...register and vote...unless the exercise of a civil right has been precluded by an unrevoked adjudication of incompetency. N.C. Gen. Stat. § 122C-58 (Michie 1996)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 6

State	Constitutional Disqualification	Statutory Disqualification
North Dakota	No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. N.D. Const. Art. 2, § 2 (Michie 1998)	Election statute disqualification repealed. N.D. Cent. Code § 16.1-01-04 (Michie Supp. 1999) Except upon specific findings of the court, no ward may be deprived of any of the following legal rights: to vote. N.D. Cent. Code § 30.1-28-04(3) (Michie 1996)
Ohio	No idiot, or insane person, shall be entitled to the privileges of an elector. Ohio Const. Art 5, § 6 (Anderson Publishing Company 1994)	Adjudicated incompetent for the purpose of voting, as provided in section 5122.301 [5122.30.1] of the Revised Code...Ohio Rev. Code Ann. § 3503.18 (Anderson Publishing Company, 1996)
Oklahoma	Subject to such exceptions as the Legislature may prescribe...Okla. Const. Art. III, § 1 (West 1981)	Any person who has been adjudged to be an incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes, shall be ineligible to register to vote. When such incapacitated person has been adjudged to be no longer incapacitated such person shall be eligible to become a registered voter. The provisions of this paragraph shall not prohibit any person adjudged to be a partially incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes from being eligible to register to vote unless the order adjudging the person to be partially incapacitated restricts such persons from being eligible to register to vote. Okla. Stat. tit. 26, § 4-101(2) (West 1997) In establishing the specific limitations on the legal activities of a ward for whom a limited guardian of the person is appointed, the court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity...to vote Okla. Stat. Ann. Tit 30, § 3-113(b)(1) (West 1991)
Oregon	A person suffering from a mental handicap is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law. Or. Const. Art. 2, § 3 (Butterworth 1998)	Every mentally ill person committed to the Mental Health and Developmental Disability Services Division shall have the right to...[e]xercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to...vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Or. Rev. Stat. § 426.385(1)(n) (Butterworth Supp. 1996) Every resident shall have the right to exercise all civil rights in the same manner, and with the same effect, as one not admitted to a state training center, including, but not limited to, the right to...vote, unless the resident has been adjudicated incompetent and has not been restored to legal capacity. Or. Rev. Stat. § 427.031(1) (Butterworth 1995)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 7

State	Constitutional Disqualification	Statutory Disqualification
Pennsylvania	No Constitutional disqualification. (West 1994; Supp, 1999)	No electoral statute disqualification. (West 1994; Supp. 1999)
Rhode Island	No person who has been lawfully adjudicated to be non compos mentis shall be permitted to vote. R.I. Const. Art. 2, § 1 (Michie 1987)	“Qualified voter” shall mean any person who is eligible to vote under the requirements of age, residence, and citizenship prescribed by the state constitution and who is duly registered to vote, or who is exempt from registration, pursuant to this title, and who is not otherwise disqualified as a voter pursuant to law. R.I. Gen. Laws R.I. § 17-1-2(13) (Michie 1996)
South Carolina	The General Assembly shall establish disqualifications for voting by reason of mental incompetence...and may provide for the removal of such disqualifications. S.C. Const. Art. 2, § 7 (Law Co-op 1977)	A person is disqualified from being registered or voting if he...is mentally incompetent as adjudicated by a court of competent jurisdiction. S.C. Code Ann. § 7-5-120(B)(1) (Law Co-op Supp. 1999)
South Dakota	Disqualified by law for mental incompetence. S.D. Const. Art. 7, § 2 (Allen Smith 1978)	Not otherwise disqualified. S.D. Codified Laws § 12-3-1 (Allen Smith 1995)
Tennessee	No Constitutional disqualification. (Michie 1995; Supp. 1999)	<p>Conservatorship – The rights the court may remove may include, but are not limited to, the right to vote. Tenn. Code Ann. § 34-13-104(8) (Michie 1996)</p> <p>The following rights of patients and residents apply, whenever appropriate, to both the mentally ill and the mentally retarded:...No patient or resident hospitalized or admitted pursuant to this title shall, solely by reason of such hospitalization or admission, be denied the right to... vote, unless such patient or resident has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. Tenn. Code Ann. § 33-3-104(5) (Michie Supp. 1996)</p>
Texas	All persons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may take. Tex. Const. Art. 6, § 1 (West 1993, Supp. 2000)	<p>Qualified voter – has not been determined mentally incompetent by a final judgment of a court. Tex. Elec. Code Ann. § 2-11.002(3) (West Supp. 2000)</p> <p>Register – not have been determined mentally incompetent by a final judgment of a court. Tex. Elec. Code Ann. § 2-13.001(a)(3) (West Supp. 2000)</p>
Utah	Any mentally incompetent person...may not be permitted to vote at any election or be eligible to hold office in this State until the right to vote or hold elective office is restored as provided by statute. Utah Const. Art. 4, § 6 (Michie Supp. 1999)	Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to...exercise all civil rights, including the right to...vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity. Utah Code Ann. § 62A-12-245(1)(c) (Michie 1997)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 8

State	Constitutional Disqualification	Statutory Disqualification
Vermont	Who is not of a quiet and peaceable behavior. Vt. Const. Ch. II, § 42 (Michie 1995)	Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare or needs of the patient ...or the hospital to impose restrictions, every patient is entitled: to exercise all civil rights, including the right to...vote on his own initiative, unless he has been adjudicated incompetent and has not been restored to legal capacity. Vt. Stat. Ann. tit. 18 § 7705(a)(3) (Michie 1987)
Virginia	As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished. Va. Const. Art. 2, § 1 (Michie 1995)	No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. Va. Code Ann. § 24.2-101 (Michie 1997)
Washington	All persons while they are judicially declared mentally incompetent are excluded from the elective franchise. Wash. Const. Art. 6, § 3 (West Supp. 2000)	“Elector” means any person who possesses all of the qualifications to vote under Article VI of the state Constitution. Wash. Rev. Code Ann. § 29.01.065 (West 1993)
West Virginia	Who has been declared mentally incompetent by a court of competent jurisdiction...shall be permitted to vote while such disability continues. W. Va. Const. Art. IV, § 1 (Michie Supp. 1999)	But no person who... of unsound mind shall be permitted to vote at such election while such disability continues. W. Va. Code § 3-1-3 (Michie 1999) Any person who has been determined to be mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that determination remains in effect. W. Va. Code § 3-2-2(b) (Michie 1999)
Wisconsin	Excluding from the right of suffrage persons...Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside. Wis. Const. Art. 3, § 2(4)(b) (West Supp. 1999)	The following persons shall not be allowed to vote in any election and any attempt to vote shall be rejected...Any person who is incapable of understanding the objective of the elective process or under guardianship pursuant to the order of a court under ch. 880, except that when a person is under limited guardianship, the court may determine that the person is competent to exercise the right to vote. Wis. Stat. § 6.03(1)(a) (West 1996) In accordance with s. 6.03(3), any elector of a municipality may petition the circuit court for a determination that a person residing in such a municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08(1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote. Wis. Stat. Ann. §880.07(3)

Summary of Current Constitutional and Statutory Disenfranchising Language, page 9

State	Constitutional Disqualification	Statutory Disqualification
Wisconsin, cont.		<p>In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence...The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote. Wis. Stat. Ann. §880.33(3) (West 1991)</p> <p>All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34(4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court. Wis. Stat. Ann. §880.33(9) (West 1991)</p>
Wyoming	All persons adjudicated to be mentally incompetent or persons convicted of felonies, unless restored to civil rights, are excluded from the elective franchise. Wyo. Const. Art. 6 § 6 (Michie 1999)	No person is a qualified elector who is a currently adjudicated mentally incompetent person. Wyo. Stat. Ann. § 22-1-102(a)(xxvi) (Michie 1999)

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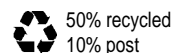
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