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## Suit Filed in Illinois over ADA

By Shauna Coleman



Proponents of the suit see the ruling as ensuring more choice in living arrangements for the disabled.

On July 28, 2005, the 15th Anniversary of the Americans with Disabilities Act, nine Illinois residents with developmental disabilities sued Illinois state officials who administer Illinois' services for people with developmental disabilities.<sup>1</sup> These individuals maintain that they could live in the community if provided with appropriate services, but the state had denied their requests to live in the community.<sup>2</sup>

The class action lawsuit brought by the American Civil Liberties Union, Equip for Equality, Access Living, the American Civil Liberties Union of Illinois, the Public Interest Law Center of Philadelphia and the law firm Sonnenschein Nath & Rosenthal LLP, among others charged state officials with violating Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title XIX of the Social Security Act and 42 U.S.C. § 1983 by requiring Plaintiffs to reside in large, privately-run congregate care institutions as a condition of receiving the long-term care services they need and for which they qualify.<sup>3</sup> Particularly, Plaintiffs argued that by "warehousing persons with developmental disabilities in large institutions, the state deprives them of their fundamental right to pursue meaningful and productive lives."<sup>4</sup>

According to their complaint, Plaintiffs argue that despite the fact that Illinois is the 10<sup>th</sup> wealthiest state in the union, it currently ranks 49<sup>th</sup> among the states in its efforts to place individuals with developmental disabilities in small integrated community

settings.<sup>5</sup> Instead, Illinois' policies route "developmentally disabled individuals into a network of approximately 250 large, privately run congregate care institutions where more than 6,000 of Illinois' developmentally disabled residents are currently housed," when most of those individuals could thrive in small community-based residential homes.<sup>6</sup> In addition to violating the integration mandates of Title II of the ADA and Section 504 of the Rehabilitation Act, the current state practice of requiring Plaintiffs to submit to institutionalization as a condition of receiving services has "caused Plaintiffs to experience unnecessary regression, deterioration, isolation and segregation" and further "perpetuates unwarranted assumptions" that Plaintiffs "are incapable or unworthy of participating in community life."<sup>7</sup>

While the lawsuit does not seek any money damages, the Plaintiffs are seeking an order that would increase the availability of community services. At a minimum, the order Plaintiffs seek would require the state: (1) to inform developmentally disabled individuals that they may be eligible for community services and that they have the choice of such services; (2) to promptly determine Plaintiffs' and class members' eligibility for community services; (3) to prohibit the state from arbitrarily denying eligibility to individuals who are capable of living in a community setting with appropriate supports and services and (4) to require the state to promptly provide eligible Plaintiffs and class members with appropriate services sufficient to allow them to live in the most integrated setting appropriate to their needs.<sup>8</sup>

However, not all advocates for the disabled support the lawsuit. Particularly, those satisfied with the current practice maintain that these large institutions "fit the needs of certain people, and they worry that if the lawsuit is successful, larger-care centers will lose funding."<sup>9</sup> William Choslovsky, an attorney for some residents at Misericordia, said those residents say they are happy there and do not wish to be included in the class proposed by the lawsuit.<sup>10</sup>

In addition, those who work in such facilities are concerned about what will happen to people who want to live in places like Misericordia, an institution that houses approximately 301 developmentally

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disabled people and has 500 on a waiting list.<sup>11</sup> Kevin Connelly, director of Misericordia says “the lawsuit seems designed to, at a minimum, portray all large facilities in a negative way.”<sup>12</sup>

At this time, however, it is still unclear how or when the lawsuit will be decided or if any new legislation will be successful.

<sup>1</sup> Press Release, Equip for Equality, *Illinois Residents Sue State for Violating Americans with Disabilities Act, Failing to Provide Community Services* (July 28, 2005), [http://www.equipforequality.org/news/pressreleases/july\\_28\\_2005illinois\\_residents.php](http://www.equipforequality.org/news/pressreleases/july_28_2005illinois_residents.php).

<sup>2</sup> *Id.*

<sup>3</sup> *Ligas v. Maram*, Complaint, available at [http://www.equipforequality.org/news/pressreleases/july\\_28\\_2005illinois\\_residents.php](http://www.equipforequality.org/news/pressreleases/july_28_2005illinois_residents.php) (last visited Apr. 26, 2006).

<sup>4</sup> Equip for Equality, *supra* note 1.

<sup>5</sup> Equip for Equality, Legal Advocacy Program Fact Sheet, [http://www.equipforequality.org/news/pressreleases/july\\_28\\_2005illinois\\_residents.php](http://www.equipforequality.org/news/pressreleases/july_28_2005illinois_residents.php) (last visited Apr. 26, 2006).

<sup>6</sup> *Id.*

<sup>7</sup> *Ligas v. Maram*, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> Gerry Doyle, *Choice at the core of lawsuit over housing of the disabled*, CHI. TRIB. NOV. 25, 2005, available at <http://www.ndss.org/content.cfm?fuseaction=NwsEvt.Article&article=1546>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

#### Documented Shame Sentences include:

**- Ordering convicted burglars to allow their victims to come into their homes and take anything they wanted.**

**- Requiring thieves to wear T-shirts or brightly colored bracelets announcing their crimes. One judge ordered a woman to wear a sign that said, “I am a convicted child molester.”**

**- Requiring offenders to apologize on their hands and knees — for their crimes.**

- Source: University of Chicago Chronicle

## Tennessee Participates in Modern Trend toward Shame Sentencing

By Andrea Hunwick

January 1, 2006, marks the modern use of shame sentencing in Tennessee. Recent state legislation includes a mandatory sentence, which requires DUI offenders to pick-up roadside trash while wearing bright orange vests bearing the four-inch words, “I AM A DRUNK DRIVER.”<sup>1</sup>

Shaming laws have reemerged in the commonplace of the American justice system in response to demand for alternatives to what some say is an ineffective prison system.<sup>2</sup> This Tennessee law seeks to sufficiently embarrass DUI offenders in order to deter them from repeat convictions, and also, to show other Tennessee drivers the consequence of driving while intoxicated.<sup>3</sup> Known across Tennessee as the “shame law,” it is a mandatory sentence that calls for the offender to spend 24 hours in jail and to spend an additional 24 hours (three, eight hour shifts) picking-up roadside litter while wearing the orange vests.<sup>4</sup> In addition, whenever vans transport offenders to and from the work site, they must carry front and rear signs declaring, “DUI Litter Pickup Crew.”<sup>5</sup>

The law is controversial throughout Tennessee. Some opponents, such as Tennessee Governor Phil Bredesen, believe that this law will fail to be both an effective deterrent and a sufficient punishment.<sup>6</sup> Consequently, the law went into effect without the governor’s signature.<sup>7</sup>

Advocates from Mothers Against Drunk Driving (“MADD”) argue that the new sentence is too lenient.<sup>8</sup> They claim that the previous 48 hour mandated jail time, *not* community service is the best deterrent to drunk driving.<sup>9</sup>

Similarly, the Tennessee Sheriff’s Association is petitioning the General Assembly to repeal the law.<sup>10</sup> They argue that supervising the trash pick-up will create too heavy a burden on the officers and taxpayers alike.<sup>11</sup> The estimated cost of executing the law is at least two million dollars for the state of Tennessee.<sup>12</sup> Each county must implement the program without additional funding from the state government.<sup>13</sup> Expenses include the purchasing of transport vehicles,

(Shame Sentencing, continued on page 6)