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## Tennessee Participates in Modern Trend Towards Shame Sentencing

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## NEWS

(ADA Ruling, *continued from page 4*)

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.*

## 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*)

### 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

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hiring of personnel to oversee the program and the purchasing of equipment.<sup>14</sup>

Meanwhile, public interest groups and attorneys are concerned about the shaming aspect of the law. Tennessee State Representative Charles Curtiss, sponsor of the law, believes that shaming will decrease repeat offenses because offenders will be too embarrassed to dare drive while intoxicated again.<sup>15</sup> However, public interest advocates disagree. Jacqueline Helfgott, chairwoman of the criminal justice department at Seattle University, argues that the Tennessee law shames offenders without attaching meaningful treatment programs to the punishment and could backfire.<sup>16</sup> Helfgott warns Tennessee lawmakers that the embarrassment might actually cause offenders to drink more in order to counteract the shame, thus cultivating crime instead of acting as a deterrent.<sup>17</sup> Despite criticism, similar shaming penalties have been enacted in recent years throughout the country. Currently, Ohio, Minnesota, and Georgia all require DUI offenders to place a sticker on their license plates labeling them a drunk driver.<sup>18</sup>

The ACLU, however, denounces shame penalties because it believes they run contrary to the entire purpose behind sentencing offenders. It argues that the goal of sentencing should be the rehabilitation and reintegration of offenders into society, not their dehumanization and ostracism.<sup>19</sup>

In Illinois, it is unclear whether the state courts would permit similar shaming provisions. In *People v. Meyer*, the Illinois Supreme Court ruled that it is not within a judge's otherwise broad discretion to impose shaming penalties.<sup>20</sup>

This does not mean that shaming penalties in Illinois are wholly unlikely. In fact, the Court suggested that if the legislation was amended to specifically allow for probation conditions where shame is the primary purpose then judges would have the discretion to implement such conditions.<sup>21</sup> "I am surprised that [the legislature] ha[s] not attempted to do so sooner," said James Carey, Professor of Criminal Law at Loyola University Chicago School of Law.<sup>22</sup>

However, the *Meyer* court did not discuss whether shame penalties violate an individual's Eighth Amendment right against cruel and unusual punishment,

and shaming sentences might be overturned on that ground.

<sup>1</sup> Erik Schelzig, *Tennessee hopes to shame first-time drunken drivers; But new law has many critics*, REC. N.J., Jan., 2006 at A5.

<sup>2</sup> June Arney, *Shame And Punishment Our Forebears Put Scoundrels In Stocks, Or Branded Them With The "Scarlet Letter." Now, 300 Years Later, 'Shame' Sentences Are Back In Vogue*, THE VIRGINIAN-PILOT, Mar. 2, 1997 at J1.

<sup>3</sup> Criminal Law Lawyer Source, *New DUI Law Makes Spectacle of Offenders*, <http://www.criminal-law-lawyer-source.com> (click on Articles, type "'Tennessee' 'DUI' 'offender' 'law'" in the search engine) (last visited Jan. 27, 2006).

<sup>4</sup> *Id.*

<sup>5</sup> Anna C. Irwin, *Berrong: New DUI law to cost taxpayers*, THE DAILY TIMES, Jan. 15, 2006, available at <http://www.thedailytimes.com/sited/story/html/227709>.

<sup>6</sup> Criminal Law Lawyer Source, *supra* note 3.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> Anna C. Irwin, *supra* note 5.

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

<sup>12</sup> Criminal Law Lawyer Source, *supra* note 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Schelzig, *supra* note 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Erik Schelzig, *Tenn. Shames drunk drivers. A new law pyts them on the road – cleaning up and branded. Critics say treatment is better.*, THE PHILADELPHIA INQUIRER, Jan. 8, 2006 at A8.

<sup>19</sup> "Shame On You" Sentencing In Vogue, Dec. 19, 1996, available at WLN 13542.

<sup>20</sup> *People v. Meyer*, 176 Ill.2d 372, 383 (1997).

<sup>21</sup> *Meyer*, 176 Ill.2d at 382.

<sup>22</sup> Interview with James Carey, Professor, Loy. U. Chi., in Chicago, Ill. (Feb. 22, 2006).