

# DISABILITY ISSUES

## THE AMERICANS WITH DISABILITIES ACT AND THE LAW AGAINST DISCRIMINATION

The Americans with Disabilities Act (ADA), which was signed into law in 1990, provides Americans who have physical or mental disabilities with federal civil rights protection against discrimination based on disability in the areas of employment, public transportation, public accommodations and telecommunications. Similarly, the Rehabilitation Act provides that “no otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” The ADA expanded the scope of the Rehabilitation Act to include all private actors and not only those receiving federal funds. The ADA requires entities to make reasonable accommodations to a person’s known disability unless the accommodation would impose an “undue hardship” on the employer or program.

The Tennessee Human Rights Commission defines a handicap, with respect to a person, as “a physical or mental impairment which substantially limits one or more of such person’s major life activities; a record of having such an impairment; or being regarded as having such an impairment. Handicap does not include current, illegal use of, or addiction to, a controlled substance” (T.C.A. §4-21-102). Tennessee laws also prevent discrimination against handicapped individuals in real estate and public accommodations.

### Discrimination by the Government

The U.S. Constitution requires that government bodies and their agents provide people with “equal protection of the laws.” This provision can be used to combat discrimination by the government or government agencies, (for example, public schools, police) that don’t fall into one of the categories covered by the anti-discrimination laws. For example, government

discrimination against ex-offenders or aliens can sometimes be fought.

Federal government employees and prospective employees who claim discrimination based on membership in a protected class should file complaints with the Equal Employment Opportunity (EEO) officer at work.

### School discrimination

Public schools cannot deny education to a student because of a disability. Federal and state law, cooperatively, provide for free appropriate public education for children with disabilities, emphasizing special education and services related to meeting the needs of children with disabilities.

The federal government passed the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1412 (1995), to provide disabled pre-school and school age children equal education opportunities with non-disabled students. The act was adopted by various states and includes early intervening services, evaluation and reevaluation of disabilities, individualized education programs and monitoring by highly qualified teachers.

The following list is a partial summary of the rights given to parents of children with disabilities under IDEA:

- The right to an evaluation of your child.
- The right to notice before any action which requires your consent.
- The right to have your child placed in the least restrictive environment possible.
- The right to review all of your child’s school records.



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- The right to request an impartial due process hearing.
- The right to file an administrative complaint with the Tennessee Department of Education, Division of Special Education, if you think that your local education agency has not acted in compliance with state or federal regulations governing the education of special needs students.

In Tennessee, school districts must provide programs reasonably calculated to enable disabled students to receive educational benefits in the least restrictive setting. Only in extreme circumstances may schools be unable to accommodate a student's disability in a regular or special classroom setting.

Local school districts must develop a written Individualized Education Program (IEP), which lists the educational goals and services to be provided to each pupil with a disability. The student has a right to a special education evaluation, following which educators must prepare a classification for the student. An opportunity is then provided to the parent or guardian for consultation with the appropriate special educational service personnel of the school district. Pursuant to State Board rules parents may appeal the classification in the State Department of Education.

### **Employment discrimination based on a disability**

Employers with 15 or more employees are subject to the ADA. Employers are prohibited from directly discriminating against employees because of their disability and are also prohibited from using standards or criteria that have the effect of discriminating, or perpetuate discrimination, and from using qualification standards or tests that screen out people with disabilities, unless the criteria are necessary for the job. Employers can not discriminate in job application procedures, hiring, promotion, compensation, job training or discharge of employees.

Employers must reasonably accommodate an otherwise qualified disabled employee unless the needed accommodation produces an undue hardship. Reasonable accommodation may include: (a) making existing facilities accessible to individuals with disabilities and (b) job restructuring, modification of equipment, adjustment of exams, training materials, or providing readers or interpreters. The employee must be "otherwise qualified," meaning that s/he can perform the essential functions of the job with or without an accommodation.

### **Right to refuse treatment**

ACLU-TN traditionally advocates the right of individuals to refuse treatment because the right to control one's body is one of the most fundamental rights one has. This is as true for people with mental disabilities as it is for people who do not wish to be kept alive by life-support devices, although there are instances where one's right to refuse treatment can be overridden. A competent person may execute a declaration directing the withholding or the withdrawal of life prolonging procedures. If family members disagree with a doctor's decision to remove or maintain life-support equipment, they can invoke the dispute resolution process established by the health care institution, or hire an attorney to pursue a court order. In such cases the court will appoint a guardian *ad litem* to represent the patient's interests.

### **Involuntary Confinement (Civil Commitment)**

The Supreme Court has deemed involuntary commitment to be a "massive curtailment of liberty." People may be referred for involuntary commitment by police or relatives who believe that they need hospitalization for mental problems. However, in Tennessee civil commitments can only be effectuated by the clinical certification of either 2 psychiatrists or 1 physician and 1 psychiatrist. Additionally, if the person is under the age of 16, 1 of the doctors must have specific experience with children.



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In Tennessee there are two types of involuntary commitments, emergency and nonemergency. A person subject to emergency involuntary commitment cannot be held for more than 24 hours without a court order. In order to determine that continued involuntary commitment is required, the court must determine *by clear and convincing evidence* that the person is both mentally ill and dangerous to either himself or others. If further commitment is deemed unnecessary, the individual is released in accordance with the recommendations of the chief officer. Conditions after discharge may be imposed upon the patient.

The Supreme Court has ruled that a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom on his or her own or with the help of willing and responsible family members or friends. Due process does not allow the commitment of harmless individuals simply because they have a diminished standard of living.

### **Public Transportation**

Buses and trains ordered after August 26, 1990 must be accessible to the disabled. Rail systems must have one accessible car per train and bus lines must provide comparable special transportation services to disabled individuals who cannot use fixed bus routes, unless special transportation services would be an undue hardship. Individuals may bring private lawsuits or complaints can be made to the Department of Transportation.

### **Access to Housing**

The Fair Housing Act of 1968 prohibits discrimination on the basis of familial status, disability, race, color, religion, sex and national origin, and covers sale and rental of residential housing, refusal to deal, and a number of related actions. Amendments to the Act in 1988 not only added disabled persons and families with children to the categories of people protected from discrimination, but also added significant new enforcement remedies. *Complaints about violations*

*can be filed with the Department of Housing and Urban Development.* If reasonable cause is found by HUD, the agency must issue a formal charge.

Either party can remove the case to court where it will be litigated by the Department of Justice. If the case is heard instead in an administrative hearing before a HUD administrative law judge, the act provides for compensatory damages and injunctive relief and civil penalties up to \$10,000 for the first offense, \$25,000 if there has been a prior violation within the previous five years, and \$50,000 if there have been two or more violations within the previous seven years. If the case is removed to court, civil penalties are not available, but punitive damages may be awarded in addition to the compensatory damages and injunctive relief. There is no requirement that a party exhausts its administrative remedies before filing suit in court, but if administrative proceedings are pending, a private suit cannot be filed.

### **RESOURCES – NATIONAL AND STATE**

ACLU-TN provides the following list of resources for informational purposes only. ACLU-TN does not endorse any of the organizations listed.

#### **National Organizations**

- [CHADD - Children and Adults with Attention Deficit/Hyperactivity Disorder](http://www.chadd.org)  
<http://www.chadd.org>  
8181 Professional Place, Suite 150  
Landover, MD 20785  
(301) 306-7070  
To request information: (800) 233-4050  
Provides advocacy for adults and children with ADHD. Call or consult web site for local chapter information.



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▪ **United States Department of Housing and Urban Development**

*One Newark Center, 13<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 622-7900*

**or**

*800 Hudson Square, 2<sup>nd</sup> Floor  
Camden, NJ 08102  
(856) 757-5081*

**or**

*451 7<sup>th</sup> St SW  
Washington DC 20410-2000  
(202) 708-1112*

▪ **United States Department of Justice, Civil Rights Division**

*950 Pennsylvania Ave., NW  
Washington DC 20530  
(202) 514-4609, (202) 514-0716(TTY)  
[www.usdoj.gov/crt](http://www.usdoj.gov/crt)*

Handles complaints concerning Sections A and B of Title 2 of the ADA (state and local government service and public services).

▪ **United States Department of Justice, Office of the ADA, Disability Rights Section**

*950 Pennsylvania Ave., NW  
Washington DC 20530  
(800) 514-0301, (800) 514-0383 (TTY)*

▪ **Center for Independent Living of Middle TN**

*480 Craighead St., Suite 200  
Nashville, TN 37206  
615-292-5803 (v); 615-292-7790 (tty)  
615-383-1176 (fax)*

▪ **Disability Resource Center**

*900 E. Hill Avenue, Suite 120  
Knoxville, TN 37915  
865-637-3666 (v)  
865-637-5616 (fax)*

▪ **Jackson Center for Independent Living**

*1981 Hollywood Drive  
Jackson, TN 38305  
731-668-2211 (v)  
731-688-1772 (tty)  
731-668-0406 (fax)*

▪ **Memphis Center for Independent Living**

*1633 Madison  
Memphis, TN 38104  
901-726-6404 (v) 901-726-6404 (tty)  
901-726-6521 (fax)*

▪ **Tennessee Committee For Employment of People With Disabilities**

*Citizens Plaza Building, 2<sup>nd</sup> Floor  
200 Deaderick Street  
Nashville, TN 37243-1403  
Phone: (615) 313-4891  
Fax: (615)741-6508  
TDD: (615)313-5695*

▪ **Tennessee Department of Human Services Blind and Visually Impaired Services**

*Phone: (615)313-4914  
Toll-Free: (800)328-7818  
TTY (Local): (615)313-6601  
TTY(Long Distance): (800)270-1349  
Fax: (615)313-6617*

▪ **Tennessee Department of Human Services**

*400 Deaderick Street – 2<sup>nd</sup> Floor  
Nashville, TN 37243-1403  
Phone: (615)313-4700*

## State Organizations

▪ **The Arc of Sullivan County At People Place**

*#100 Fort Shelby Towers  
400 Shelby Street  
Bristol, TN 37620  
423-274-8165 (v)  
423-274-8151(fax)  
Network Contact: Evelyn Smith  
[arcscn@bthra.org](mailto:arcscn@bthra.org)*

▪ **Buffalo River Services, Inc.**

*2300 WO Smith St.  
Lawrenceburg, TN 38464  
931-762-3381 (v)  
931-762-3205 (fax)*



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- **Tennessee Disability Coalition**  
955 Woodland Street  
Nashville, TN 37206  
615-383-9442 (v)  
615-292-7790 (tty)  
615-383-1176 (fax)  
E-mail: [coalition@mdisability.org](mailto:coalition@mdisability.org)
  
- **Tennessee Department of Human Services, Deaf and Hard of Hearing Services**  
Telephone: (615) 313-4914  
Toll Free: 1-800-628-7818 (In-State Only)  
TTY: (615) 313-6601 (Local)  
TTY: 1-800-270-1349 (Long Distance)  
Fax: (615) 313-6617
  
- **Tennessee Rehabilitation Center**  
460 Ninth Avenue  
Smyrna, TN 37157  
Phone: (615)459-6811  
TDD: (615)233-9402  
Fax: (615)355-1373  
Contact the Tennessee Rehabilitation Center for Compliance concerns, Councils and Committees, and general information about rehabilitation services.
  
- **Tri-State Resource & Advocacy Corporation, Inc.**  
5800 Building, Suite 350  
5708 Uptain Road  
Chattanooga, TN 37411  
423-892-4774 (v/tty)  
423-892-9866 (fax)



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