

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 disability, 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. ‘Disability’ does not include current, illegal use of, or addiction to, a controlled substance or controlled substance analogue” (T.C.A. §4-21-102). Tennessee laws also prevent discrimination against individuals with disabilities 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, (ex. public schools and 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 pre-school and school age children with disabilities 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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This information provided is for educational purposes only. It is not intended to be legal advice.

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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 students with disabilities 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 individuals with disabilities. Rail systems must have one accessible car per train and bus lines must provide comparable special transportation services to individuals with disabilities 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

- **[American Foundation for the Blind](http://www.afb.org/default.aspx)**
2 Penn Plaza, Suite 1102
New York, NY 10121
Website: <http://www.afb.org/default.aspx>
Phone: 212-502-7600
Fax: 888-545-8331

The American Foundation for the Blind removes barriers, creates solutions, and expands possibilities so people with vision loss can achieve their full potential.



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- **CHADD - Children and Adults with Attention-Deficit/Hyperactivity Disorder**

4601 Presidents Drive, Suite 300
Lanham, MD 20706
Website: <http://www.chadd.org/>
Phone: 301-306-7070
Fax: 301-306-7090
For Help: 800-233-4050

CHADD is a non-profit organization providing education, advocacy and support for individuals with ADHD.

- **National Council on Disability**

1331 F Street, NW, Suite 850
Washington, DC 20004
Website: <http://www.ncd.gov/>
Phone: 202-272-2004
TTY: 202-272-2074
Fax: 202-272-2022

The National Council on Disability (NCD) is an independent federal agency whose mission is to be a trusted advisor, in collaboration with people with disabilities, to the President, Congress, federal entities, and other entities and organizations.

- **National Disability Rights Network**

820 1st Street NE, Suite 740
Washington, DC 20002
Website: <http://www.ndrn.org/index.php>
Phone: 202-408-9514
Fax: 202-408-9520
TTY: 202-408-9521

The National Disability Rights Network (NDRN) works to improve the lives of people with disabilities by guarding against abuse, advocating for basic rights, and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems.

- **National Federation of the Blind**

200 East Wells Street at Jernigan Place
Baltimore, MD 21230
Website: <https://nfb.org/>
Phone: 410-659-9314
Fax: 410-685-5653

The purpose of the National Federation of the Blind is the complete integration of the blind into society on a basis of equality. This objective involves the removal of legal, economic, and social discriminations and the education of the public to new concepts concerning blindness.

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

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all.

Website: <http://portal.hud.gov/hudportal/HUD>

National Office

451 7th St SW
Washington DC 20410
Phone: 202-708-1112
TTY: 202-708-1455

Nashville Field Office

235 Cumberland Bend, Suite 200
Nashville, TN 37228-1803
Phone: 615-736-5600
E-mail: TN_Webmanager@hud.gov

Knoxville Field Office

John J. Duncan Federal Building
710 Locust Street, SW, 3rd Floor
Knoxville, TN 37902-2526
Phone: 865-545-4370
E-mail: TN_Webmanager@hud.gov

Memphis Field Office

200 Jefferson Avenue, Suite 300
Memphis, TN 38103-2389
Phone: 901-544-3367
E-mail: TN_Webmanager@hud.gov



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State Organizations

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

950 Pennsylvania Ave., NW

Washington DC 20530-0001

Website: <http://www.justice.gov/crt>

Phone: 202-514-4609

TTY: 202-514-0716

The Civil Rights Division of the DOJ works to uphold civil and constitutional rights of all Americans. The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin.

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

950 Pennsylvania Ave., NW

Civil Rights Division

Disability Rights Section - NYA

Washington, DC 20530

Website: <http://www.ada.gov/>

Phone: 800-514-0301

TTY: 800-514-0383

The Disability rights Section works to achieve equal opportunity for people with disabilities in the United States by implementing the Americans with Disabilities Act (ADA).

- **The Arc Tennessee**

151 Athens Way

Nashville, TN 37228

Website: <https://www.thearctn.org/>

Phone: 615-248-5878 or 800-835-7077

E-mail: info@thearctn.org

For local chapters service areas:

<http://www.thearctn.org/Chapters.php>

The Arc Tennessee is a grassroots, non-profit advocacy organization for people with intellectual and developmental disabilities and their families.

- **Bridges**

935 Edgehill Avenue

Nashville, TN 37203

Website:

<http://www.bridgesfordeafandhh.org/>

Phone/TTY: 615-248-8828

Video Phone Local: 615-290-5147

Video Phone Toll Free: 866-385-6524

24-Hour Emergency: 615-244-0979

Fax: 615-248-4797

Bridges mission is to unite the Deaf, hard of hearing and hearing communities through education, services and support, empowering individuals to achieve their full potential.



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- **Disability Resource Center**

900 East Hill Avenue, Suite 205
Knoxville, TN 37915

Website: <http://www.drctn.org/>

Phone: 865-637-3666

Fax: 865-637-5616

E-mail: drc@drctn.org

The Disability Resource Center (dRC) is a community-based, non-residential Center for Independent Living designed to assist people with disabilities gain independence and to assist the community eliminate barriers to independence.

- **Disability Rights Tennessee**

Disability Rights Tennessee (DRT) is a non-profit legal services organization that provides free services to protect the rights of Tennesseans with disabilities.

Website: <http://www.disabilityrightstn.org/>

Phone: 1-800-342-1660

E-mail: GetHelp@disabilityrightstn.org

Middle Tennessee (Administrative Office)

2 International Plaza, Suite 825

Nashville, TN 37217

Phone: 615-298-1080

Fax: 615-298-2046

East Tennessee

9050 Executive Park Drive, Suite 101-B

Knoxville, TN 37923

Phone: 865-670-2944

Fax: 865-470-7028

West Tennessee

2693 Union Avenue Extended, Suite 201

Memphis, TN 38112

Phone: 901-458-6013

Fax: 901-458-7819

- **Jackson Center for Independent Living**

1981 Hollywood Drive

Jackson, TN 38305

Website: <http://www.j-cil.com/>

Phone: 731-668-2211

TTY: 731-664-3986

Video Phone: 731-256-7026

Fax: 731-668-0406

E-mail: information@jcil.tn.org

The Jackson Center for Independent Living is a community-based, nonresidential, consumer controlled program of services designed to enable persons with disabilities to achieve maximum independence and fully participate in all aspects of community life.

- **Memphis Center for Independent Living**

1633 Madison Avenue

Memphis, TN 38104

Website: <https://sites.google.com/site/mcilaction/>

Phone: 901-726-6404

E-mail: info@mcil.org

The Memphis Center for Independent Living works so that people with disabilities in the Memphis area may live independently.

- **Tennessee Department of Human Services Disability Services**

400 Deaderick Street

Nashville, TN 37246-1403

Website: <http://www.tn.gov/humanservices/section/disability-services>

Phone: 615-313-4700

E-mail: Human-Services.Webmaster@tn.gov

The Department of Human Services (DHS) is responsible for administering a variety of programs and services for individuals with disabilities.



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Vocational Rehabilitation

Citizens Plaza State Office Building
12th Floor, 400 Deaderick Street
Nashville, TN 37243-1403

Website: <http://www.tn.gov/humanservices/topic/vocational-rehabilitation>

Phone: 615-313-5695

TTY: 615-313-5695

Fax: 615-741-6508

Vocational Rehabilitation (VR) provides assistance to Tennesseans with disabilities to promote employment. Services may include medical, psychological or vocational assessments, training, medical services, job development and job placement.

Blind and Visually Impaired Services

Website: <http://www.tn.gov/humanservices/topic/blind-visually-impaired-services>

Phone: 615-313-4914

Toll Free: 1-800-628-7818

TTY: 615-313-6601

Fax: 615-313-5815

Blind and Visually Impaired Services provides rehabilitation services to the blind or visually impaired to promote employment, independent living, and adjustment to blindness. This program also provides some emergency medical treatment to prevent blindness to those who cannot afford such treatment.

Deaf, Deaf-Blind and Hard of Hearing Services

Website: <http://www.tn.gov/humanservices/topic/deaf-and-hard-of-hearing-services>

Counselors are located in vocational rehabilitation regional offices across the state.

Deaf, Deaf-Blind and Hard of Hearing Services provide specialized vocational rehabilitation services to eligible clients that enable them to enter, retain, or return to competitive employment.

Disability Determination services

Website: <http://www.tn.gov/humanservices/topic/disability-determination-services>

Phone: 1-800-342-1117

Disability Determination Services make disability determinations for the Social Security Administration for Tennesseans applying for Disability Insurance Benefits (DIB) and Supplemental Security Benefits (SSI) through the Social Security Program.

Tennessee Technology Access Program (TTAP)

Citizens Plaza State Office Building, 12th Floor
400 Deaderick Street
Nashville, TN 37243-1403

Website: <http://www.tn.gov/humanservices/topic/ttap>

Phone: 615-313-5183

Toll Free: 1-800-732-5059

TTY: 615-313-5695

E-mail: TN.TTAP@tn.gov

TTAP promotes awareness about and access to assistive technology devices and services in order to increase independence of individuals with disabilities.

Tennessee Disability Coalition

955 Woodland Street
Nashville, TN 37206

Website: <http://www.tndisability.org/>

Phone: 615-383-9442

E-mail: coalition@tndisability.org

The Tennessee Disability Coalition is an alliance of organizations and individuals joined to promote the full and equal participation of people with disabilities in all aspects of life.



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- **Tennessee Disability Pathfinder**

Website: <http://vkc.mc.vanderbilt.edu/vkc/pathfinder>

Toll Free helpline: 800-640-4636

Tennessee Disability Pathfinder provides free information, resources, support, and referrals to Tennesseans with disabilities and their families.

- **Tennessee Rehabilitation Center (TRC)**

460 Ninth Avenue

Smyrna, TN 37167

Website: <https://www.tn.gov/humanservices/topic/trc-smyrna>

Phone: 615-459-6811

Fax: 615-355-1373

The TRC is a state-operated comprehensive rehabilitation facility. Services are provided on campus and the majority of clients live on campus in residential living units while receiving services.

- **Tri-State Resource & Advocacy Corporation, Inc.**

6925 Shallowford Road #300

Chattanooga, TN 37421

Website: <http://www.1trac.org/>

Phone: 423-892-4774

Fax: 423-892-9866

Tri-State Resource & Advocacy Corporation (TRAC) is a center for independent living created by individuals with disabilities for people with disabilities. TRAC's Independent Living Philosophy promotes self-determination, equal opportunities, systems individual advocacy, peer support and self-help along with self-respect.

- **United Cerebral Palsy of Middle Tennessee**

1200 9th Avenue North, Suite 110

Nashville, TN 37208

Website: <http://ucpmidtn.org/>

Phone: 615-242-4091

United Cerebral Palsy of Middle Tennessee (UCPMidTN) serve the people of Tennessee with programs targeted to advance the independence and full citizenship of people with disabilities. UCPMidTN focuses on services to individuals of all ages and all types of disabilities, especially those that primarily affect mobility.

- **Vanderbilt Kennedy Center**

110 Magnolia Circle

Nashville, TN 37203

Website: <http://vkc.mc.vanderbilt.edu/vkc/>

Phone: 615-322-8240

E-mail: kc@vanderbilt.edu

The Vanderbilt Kennedy Center forms partnerships between researchers and clinicians in behavior, education, genetics and neuroscience in order to solve mysteries of developmental disabilities and human development. Services are offered to people with disabilities, families, educators and service providers.

- **Tennessee Commission on Aging and Disability**

502 Deaderick Street, 9th Floor

Nashville, TN 37243-0860

Website: <https://www.tn.gov/aging/>

Phone: 615-741-2056

The Tennessee Commission on Aging and Disability aim to bring together and leverage programs, resources, and organizations to protect and ensure the quality of life and independence of older Tennesseans and adults with disabilities.



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- **People First of Tennessee, Inc.**

Website: <http://peoplefirstoftennessee.org/>

E-mail: peoplefirstoftennessee@gmail.com

People First of Tennessee, Inc. is a grassroots disability rights organization run by and for people with disabilities. Their mission is to provide a means for people with disabilities to air and alleviate their concerns in the areas of housing, education, employment and transportation.

- **Southeast ADA Center**

1419 Mayson Street NE

Atlanta, Georgia 30324

Website: <http://www.adasoutheast.org/>

Phone: 404-541-9001

Toll Free: 1-800-949-4232

E-mail: adasoutheast@law.syr.edu

The Southeast ADA Center is a leader in providing information, training, and guidance on the [Americans with Disabilities Act \(ADA\)](#) and disability access tailored to the needs of business, government, and individuals at local, state, and regional levels. They also conduct research to reduce and eliminate barriers to employment and economic self-sufficiency and to increase the civic and social participation of Americans with disabilities.



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