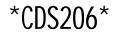
Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1	State of Arkansas	As Engrossed: \$3/13/01		
2	83rd General Assembly	A Bill		
3	Regular Session, 2001		SENATE BILL 880	
4				
5	By: Senators Gullett, Brown, Mahony, P. Malone			
6	By: Representatives Dees, Sal	lmon, Bradford		
7				
8				
9	For An Act To Be Entitled			
10	AN ACT TO PROVIDE FOR INTEGRATED PUBLIC SERVICES			
11	FOR INDI	VIDUALS WITH DISABILITIES IN ACCORDA	ANCE	
12	WI TH THE	UNITED STATES SUPREME COURT'S OLMS	TEAD	
13	DECI SI ON	; AND FOR OTHER PURPOSES.		
14				
15		Subtitle		
16	AN AC	T TO PROVIDE FOR INTEGRATED PUBLIC		
17	SERVICES FOR INDIVIDUALS WITH			
18	DI SAB	ILITIES IN ACCORDANCE WITH THE		
19	UNI TE	D STATES SUPREME COURT'S OLMSTEAD		
20	DECI S	I ON.		
21				
22				
23	BE IT ENACTED BY THE GE	ENERAL ASSEMBLY OF THE STATE OF ARKA	NSAS:	
24				
25	SECTION 1. Legis	<u>slative declaration</u>		
26	<u>The General Assen</u>	nbly finds:		
27	(1) That Congres	ss enacted Title II of the Americans	<u>8 With Disabilities</u>	
28	<u>Act to end discriminati</u>	on against qualified individuals wi	th disabilities by	
29	<u>public entities;</u>			
30	(2) That regulat	tions issued by the United States At	torney General under	
31	Title II provide that public entities shall administer services, programs, and			
32	activities in the most integrated setting appropriate to the needs of			
33	<u>qualified individuals with disabilities;</u>			
34	(3) That the United States Supreme Court has interpreted and applied			
35	both Title II and the regulations promulgated under that title in the case of			
36	Olmstead v. L.C. by Z	Zimring; and		



As Engrossed: S3/13/01

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1	(4) That the services provided by the State of Arkansas to qualified		
2	individuals with disabilities should be furnished in the most integrated		
3	<u>setting appropriate to qualified individuals in accordance with the Americans</u>		
4	With Disabilities Act as interpreted by the United States Supreme Court.		
5			
6	SECTION 2. Arkansas Code 16-123-103, concerning applicability of the		
7	Arkansas Civil Rights Act, is amended by adding the following additional		
8	subsection:		
9	(f)(1) Persons with disabilities must be provided the option of		
10	declining particular accommodations.		
11	(2) In determining where to provide treatment to persons with		
12	disabilities, public entities may generally rely on the reasonable assessments		
13	of their own professionals in determining whether an individual meets the		
14	essential eligibility requirements for habilitation in a home or community-		
15	based program.		
16	(3) In the allocation of available resources, public entities may		
17	decline to make home or community-based services immediately available to		
18	persons with disabilities if the provision of those services would be		
19	inequitable, given the responsibility the public entity has undertaken for the		
20	care and treatment of a large and diverse population of persons with		
21	<u>di sabi l i ti es.</u>		
22	(4) It is reasonable for public entities to ask persons with		
23	<u>disabilities to wait until home or community-based services are available,</u>		
24	provided that the public entity has a comprehensive, effectively working plan		
25	for placing qualified persons with disabilities in less restrictive settings,		
26	and a waiting list for home or community-based services that moves at a		
27	reasonable pace not controlled by the public entity's endeavors to keep its		
28	institutions fully populated.		
29			
30	SECTION 3. Arkansas Code 16-123-105 is amended to read as follows:		
31	16-123-105. Civil rights offenses.		
32	(a) Every person who, under color of any statute, ordinance,		
33	regulation, custom, or usage of this state or any of its political		
34	subdivisions subjects, or causes to be subjected, any person within the		
35	jurisdiction thereof to the deprivation of any rights, privileges, or		
36	immunities secured by the Arkansas Constitution shall be liable to the party		

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1	injured in an action at law, a suit in equity, or other proper proceeding for		
2	redress.		
3	(b)(1) Public entities shall administer services, programs, and		
4	activities in the most integrated setting appropriate to the needs of		
5	<u>qualified individuals with disabilities.</u>		
6	(2) To that end, public entities shall provide home or community-		
7	based services instead of institutional treatment for persons with		
8	<u>disabilities if:</u>		
9	(A) The <i>public entity's treatment</i> professionals determine		
10	that the treatment is appropriate;		
11	(B) The affected persons do not oppose the treatment; and		
12	(C) The treatment can be reasonably accommodated, taking		
13	into account the resources available to the public entity and the needs of		
14	others with disabilities.		
15	(b)<u>(</u>c) In the discretion of the court, a party held liable under this		
16	section shall also pay the injured party's cost of litigation and a reasonable		
17	attorney's fee in an amount to be fixed by the court.		
18	(c)<u>(</u>d) When construing this section, a court may look for guidance to		
19	state and federal decisions interpreting the federal Civil Rights Act of 1871,		
20	as amended and codified in 42 U.S.C. § 1983, as in effect on January 1, 1993,		
21	which decisions and act shall have persuasive authority only.		
22	/s/ Gullett		
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