

**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  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: S3/13/01*

# A Bill

SENATE BILL 880

5 By: Senators Gullett, Brown, Mahony, P. Malone  
6 By: Representatives Dees, Salmon, Bradford  
7

## For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR INTEGRATED PUBLIC SERVICES  
11 FOR INDIVIDUALS WITH DISABILITIES IN ACCORDANCE  
12 WITH THE UNITED STATES SUPREME COURT'S OLMSTEAD  
13 DECISION; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 AN ACT TO PROVIDE FOR INTEGRATED PUBLIC  
16 SERVICES FOR INDIVIDUALS WITH  
17 DISABILITIES IN ACCORDANCE WITH THE  
18 UNITED STATES SUPREME COURT'S OLMSTEAD  
19 DECISION.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Legislative declaration

26 The General Assembly finds:

27 (1) That Congress enacted Title II of the Americans With Disabilities  
28 Act to end discrimination against qualified individuals with disabilities by  
29 public entities;

30 (2) That regulations issued by the United States Attorney 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 qualified individuals with disabilities;

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 Zimring; and

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 setting appropriate to qualified individuals in accordance with the Americans  
4 With Disabilities Act as interpreted by the United States Supreme Court.

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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 disabilities.

22           (4) It is reasonable for public entities to ask persons with  
23 disabilities to wait until home or community-based services are available,  
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.

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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

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 qualified individuals with disabilities.

6 (2) To that end, public entities shall provide home or community-  
7 based services instead of institutional treatment for persons with  
8 disabilities if:

9 (A) The public entity's treatment 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)(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 ~~(e)(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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