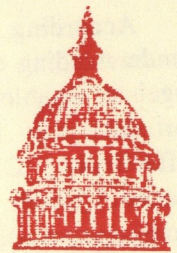


GOVERNMENT

In Brief



Published by NYSARC, Inc. • (518) 439-8311

Volume 10, Number 2

June 1998

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NYSARC, Inc.
393 Delaware Avenue
Delmar, NY 12054

TOP STORIES...

BUDGET VETOES LINGER

Legislature's Next Move Unknown

After succeeding in securing record legislative additions to the Governor's budget proposal, victory quickly turned to defeat Story on Page 3

HEARINGS, RALLY HIT VETOES

NYSARC Chief Asks Assembly If Open Budget a Sham

On June 3rd consumers, employees, parents and advocates converged in Albany from around the State to urge the Legislature to restore funds vetoed by the Governor. Story on Page 4

"CONSUMER ORIENTED REFORM EFFORT" DIES

Passive Opposition Kills Bill Introduced at the End of the Session

Long anticipated legislation toughening oversight of not-for-profit agencies serving persons with mental disabilities failed to pass either the Senate or the Assembly at the close of the recent legislative session Story on Page 6

INSIDE STORIES:

FROM WASHINGTON Pages 1-2
Crimes Against Persons with Mental Retardation

STATE GOVERNMENT Pages 2-8
Budget, Vetoes, CORE Bill, Other Stories

FROM THE COURTS Pages 8-9
Hertz Suit, Speaker Contest Vetoes

AROUND THE NATION Pages 9-10
NYS Spending, New York City Workfare

Government in Brief is published every two months as a vehicle to provide up-to-date coverage to NYSARC Chapters regarding current events in the field of developmental disabilities.

FROM WASHINGTON

SENATOR FOCUSES ON CRIME AGAINST PEOPLE WITH DISABILITIES

Bill Would Fund Research

According to Senator Mike DeWine (R-Ohio), persons with developmental disabilities are 4 to 10 times more likely to be the victims of crime than the general population. DeWine bases his claim on foreign statistics. Since comparable research has not been done in this country, DeWine is introducing legislation to study the matter.

Advocates agree that persons with developmental disabilities in this country are more likely to be singled out as crime victims. The issue, they say, has been ignored.

DeWine is a moderate Republican with a reputation for dealing with social issues. His co-sponsor is Senator Patrick Leahy (D-Vermont), who is the ranking Democrat on the Senate Judiciary Committee which has jurisdiction over the issue. So far, no House sponsor has been found.

The proposed legislation, S. 1976, the Crime Victims with Disabilities Awareness Act of 1998 would fund research to investigate the nature and extent of crime against persons with developmental disabilities; review the response of the justice system to such crime; and, identify the means of reducing such crime. The study would conclude with a report to Congress, detailing its findings.

The bill would also make data on crimes against people with disabilities part of the nation's primary information system tracking criminal activity: the Bureau of Justice Statistic's National Crime Victims Survey.

Property of The Arc NY

According to the Senator: "With a greater understanding of how, when and where violent crimes against disabled individuals occur, law enforcement officials will be able to fight these crimes more effectively. Clearly this legislation would raise the national profile of this issue in research and academic communities and help define and develop solutions."

The bill would appropriate \$850,000 for the study and would convene an interdisciplinary panel of crime experts through a collaboration between the Department of Justice and the National Research Council.

STATE GOVERNMENT

SENATE HEARINGS FOCUS ON GOVERNANCE, EXECUTIVE PAY NYSARC Testifies

Raising concerns about how not-for-profit mental hygiene agencies in New York State are run, Senate Mental Health and Developmental Disabilities Chairman, Tom Libous, held hearings in Albany on May 7.

The hearings, entitled "Consumer Oriented Reform Efforts," consisted of panels of witnesses who responded to questions from Senator Libous instead of reading from prepared texts.

"We have to take a serious look at how taxpayer dollars are being spent...." when they wind up funding a restaurant (at Cayuga) that had no apparent relationship to serving persons with mental retardation and developmental disabilities.

-Senator Tom Libous

The first panel consisted of the Commissioners of the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services. Subsequent panels consisted of local government representatives, advocates and providers.

Marc Brandt, NYSARC executive director, appeared on the fifth and final panel along with Mike Fox, NYSRA executive director and a mental health provider representative.

Senator Libous introduced the hearings by saying "we need to look at how the (not-for-profit) system is serving consumers....for the most part they're doing an excellent job....but there are some problems out there."

Throughout the hearings, Senator Libous made repeated reference to the Cayuga ARC. Some observers contend that problems cited at that chapter triggered the hearings. According to the Senator "we have to take a serious look at how taxpayer dollars are being spent...." when they wind up funding a restaurant (at Cayuga) that had no apparent relationship to serving persons with mental retardation and developmental disabilities.

Senator Libous added that he intended to use the hearings to prepare major legislation aimed at preventing future situations like Cayuga. The legislation will take into account areas such as governance, board training, fiscal responsibility and recognition of excellence.

Responding to the Senator's concerns, NYSARC's Brandt noted that Cayuga was a wake up call for NYSARC. Brandt explained that as a consequence of Cayuga, NYSARC has enhanced board training, required stricter compliance with Association requirements and instituted a process to evaluate executive directors. Brandt said that while Cayuga was an isolated event, the Association was taking it very seriously. Additionally he noted, within the space of five months, much faster than the State could have acted, Cayuga's executive director was terminated, NYSARC discharged the board, took over the operation of the chapter and successfully consolidated it with a neighboring chapter.

In his opening remarks, Senator Libous asked the audience if it was appropriate for NYSARC to extend a line of credit to Cayuga after that Chapter's gross misuse of funds. Brandt responded by stating that the line of credit was to "enable the Chapter to get back on its feet and to ensure that the Chapter honored its obligations to merchants, business persons and banks in the local community." Brandt said that the relationship between NYSARC's chapters and their communities is a top priority. "While almost all chapters independently maintain very successful relationships with local communities," he said, "in rare instances, such as Cayuga, NYSARC must step in to preserve such relationships."

Most panelists agreed however, that the best defense - the "first line of defense" as Commissioner Maul said - against future Cayugas was to have a capable and effective agency board in place.

Senator Libous cited executive compensation as another major issue. The Senator rattled off a list of executive salaries, comparing them to the operating budgets of their agencies. A number of salaries ranged from \$200,000 to \$300,000 in agencies with budgets ranging from \$70 million to \$90 million. These salaries, the Senator said, were exorbitant. One executive director earned \$400,000 to run a \$4 million agency.

Since State commissioners make only slightly more than \$100,000, Senator Libous maintained that many not-for-profit salaries were excessively high warranting a salary cap.

In response, Brandt, stated that a cap would hold "Commissioners hostage to salary levels that indeed, given their responsibilities, could be far too low.... the best judge of an appropriate executive salary is a trained, competent board familiar with the market conditions, comparable competitive salaries, challenges and responsibilities required to operate a given agency in each unique locale."

The Senator also asked panelists to what extent board training should be mandated by the State. Most agreed that general guidelines were appropriate but that the specifics should be left to not-for-profit agencies themselves.

"the best judge of an appropriate executive salary is a trained, competent board familiar with the market conditions, comparable competitive salaries, challenges and responsibilities required to operate a given agency in each unique locale."

-Marc N. Brandt

Senator Libous promised that major legislation addressing the concerns raised at the hearing should be introduced in a few weeks (See This Issue: Government In Brief, "Consumer Oriented Reform Effort Dies").

BUDGET VETOES LINGER Legislature's Next Move Unknown

After succeeding in securing record legislative additions to the Governor's budget proposal, victory quickly turned to defeat for scores of causes, interest groups and others expecting to reap the rewards of record

State tax revenues when Governor Pataki vetoed \$760 million worth of spending added by the Legislature.

"I want New York to be the comeback State, not the flashback State," said the Governor denouncing the Legislature for what he considered its profligate spending. Pataki made the remarks in the Capitol at a Sunday press conference where he unveiled his vetoes just before flying to visit Israel.

Included in the vetoes were \$158 million in member items, over half of the record \$311 million added by the Legislature to the budget for so-called "porkbarrel spending." Other vetoes encompassed every portion of the State budget including higher education, transportation, health, mental health, mental retardation and developmental disabilities, to name a few. The rationale for almost every veto was the same: the State couldn't afford it.

"This is a reaction to one thing and one thing only, the open and public conference committees....The Governor is trying to send a message to the Legislature: Don't try that again. This is how you're going to suffer."

-Assembly Speaker Sheldon Silver

Also vetoed was a \$500 million proposal to rebuild New York's public schools to be financed out of bond proceeds.

However, the Governor did not veto \$750 million in additional tax cuts to lower corporate income tax rates and left intact the largest school aid increase in history added by the Legislature, nearly \$300 million.

Legislators, lobbyists and advocates were furious that the vetoes occurred on the heels of the State's first open budget negotiations. Never before had the details of the budget been hashed out in public conference committees. Traditionally, the budget is negotiated behind closed doors by the Governor, Majority Leader and Speaker. That clandestine process has long been the target of criticism. This year's open negotiations were considered a breakthrough in good government.

Referring to the open budget process, Assembly Speaker Sheldon Silver (D-Manhattan) said of the Governor's vetoes "this is a reaction to one thing and one thing only, the open and public conference committees....The Governor is trying to send a message to the Legislature: Don't try that again. This is how you're

going to suffer."

Mental Retardation and Developmental Disabilities

The Governor's vetoes struck hard at programs for persons with mental retardation and developmental disabilities. During the open budget process the Legislature made a record addition exceeding \$16 million to the budget of the Office of Mental Retardation and Developmental Disabilities (OMRDD).

Of that amount \$8.35 million was earmarked for wage increases to low paid staff while \$5.7 million was for approximately 170 additional residential placements for persons on the community waiting list. The latter amount was in addition to \$16 million requested by the Governor to provide 500 placements to persons on the waiting list.

The Governor's waiting list request was a record for the Pataki Administration, coming close, in the estimation of some observers, to waiting list funding requested during the Cuomo Administration.

The pay increase for low paid staff included a 2.5% raise. Specifically, it was targeted at programs which haven't seen cost of living increases for years, such as Community Residences, Family Support and Sheltered Workshops. Low pay, especially for direct care workers, has been a major issue for well over a decade. The 2.5% increase was considered a major political breakthrough since the Legislature had refused to consider the matter prior to this year.

The Legislature also extended the 2.5% increase to low paid workers in other fields including mental health, substance abuse and alcoholism.

Also added to OMRDD's budget was \$900,000 to increase staffing ratios in some state-operated group homes and \$1,000,000 to encourage providers to achieve more efficient operations by sharing services.

But the Governor vetoed all of it. Like all the other vetoes in the budget, his justification was simple: the State couldn't afford it.

Surrogate Decision Making Committees Safe

Meanwhile, funding to provide statewide expansion of Surrogate Decision Making Committees (SDMC) remained safely in the budget. The funding was added by the Governor to his own budget request after he had submitted it to the Legislature. The Governor has 30 days

to amend his request. As a result of a last minute effort by advocates from NYSARC and UCP, the Governor used the 30 day amendments to add funding for statewide expansion of the SDMCs.

He didn't - nor could he - veto his own addition.

SDMCs make medical decisions for persons who haven't the capacity to make those decisions for themselves and lack a guardian or parent to make those decisions for them. The Committees are currently operating in only a fraction of the State. Where they are not operating, medical decisions often must be made by the courts, a process which can be very slow, especially since courts have very little expertise in the unique needs of persons with mental retardation.

Statewide expansion of SDMCs had been a major priority for NYSARC.

The Next Move?

Many legislators in both parties and both houses were enraged by the Governor's vetoes. The Governor, according to some observers, was willing to restore up to \$200 million of the vetoed funding. However, the Democratically controlled Assembly demanded full restoration of all \$760 million while the Senate took a middle position, hoping for a compromise between the Governor and Assembly.

Prior to adjournment, the Assembly held public hearings on the Governor's vetoes, hoping to stir public outrage and force the Governor to come to terms. But the hearings had little effect with the exception of the June 3rd hearing on the impact of the Governor's vetoes on programs for persons with mental disabilities, including mental retardation and developmental disabilities (See This Issue: Government In Brief, "Hearings, Rally Hit Vetoes"). And the budget, minus the vetoed legislative additions, continues to stand.

The Legislature may return in the fall, possibly to vote itself a salary increase. Advocates may use that as another opportunity to highlight the salary needs of direct care workers. "If the Legislature takes care of itself, it ought to take care of people who work just as hard and earn far less caring for our most vulnerable citizens," said NYSARC's executive director, Marc Brandt.

**HEARINGS, RALLY HIT VETOES
NYSARC Chief Asks Assembly
If Open Budget A Sham**

On June 3rd consumers, employees, parents and advocates converged in Albany from around the State to urge the Legislature to restore funds vetoed by the Governor.

Over 2,000 individuals rallied in the Capitol's East Park where speaker after speaker, including a number of legislators, spoke in support of additional funding for residential placements for people on the waiting list and for a 2.5% salary increase for low paid employees. The funding was added by the Legislature but vetoed by Governor Pataki.

The rally, the largest focused solely on services to persons with mental retardation and developmental disabilities for almost a decade, was held concurrently with State Assembly hearings on the impact of the Governor's vetoes on persons with mental retardation and developmental disabilities and persons with mental illness. The hearings were jointly sponsored by the Assembly Mental Hygiene Committee and the Assembly Ways and Means Committee.

"It boils down to a single question: when the legislature held open budget talks for the first time in history and decided to recognize our issues - issues often conveniently forgotten in the backroom budget negotiations that predated this year's open budget process - did it really mean to keep its promises?"

-Marc N. Brandt

Testifying at the hearings, NYSARC's executive director, Marc Brandt, noted "as profits explode on Wall Street, the State's coffers are bulging.....Just after the governor's vetoes, the media told us that the State found another \$500 million in tax revenue because someone forgot to count 30,000 tax returns.....Okay, everyone makes mistakes....But amidst so much wealth our employees, our parents and their children wonder if this government of the people, by the people and for the people will forget workers making little more than poverty wages to care for persons with mental retardation and developmental disabilities. They wonder if adult children with disabilities cared for by aging parents - more disabled than their own children - will be forgotten."

Brandt added that it all "boils down to a single question: when the Legislature held open budget talks for the first time in history and decided to recognize our issues - issues often conveniently forgotten in the backroom budget negotiations that predated this year's open budget process - did it really mean to keep its promises?"

Echoing what many skeptics have asserted about the Legislature's sudden turn to good government Brandt noted that "some have suggested that the open budget process was orchestrated....that the Legislature only pretended to strike a deal in public that they had no intention of keeping in private....(that) when the real deal is struck, it will be in a backroom where the public won't be watching and where critical issues for persons with mental retardation and developmental disabilities can be conveniently tossed into a political trash can."

"I reject that presumption," he added. "I reject it because I know the Legislature has played a long and important role bringing persons with mental retardation and developmental disabilities into society and out of places like Willowbrook....I reject it because I know you would not raise hopes so high only to sit by idly after they had been dashed."

So today we ask the Legislature and the Governor to restore the funding promised to everyone here and many more thousands who couldn't make the trip to Albany today. If you can do that you will restore the faith of all New Yorkers that this year's approach to an open budget was not a charade, but was for real."

Sixteen days after the hearings, however, the Legislature recessed for the summer making no concerted effort to restore funding vetoed by the Governor (See This Issue: Government In Brief, "Legislative Session Ends With A Whimper")

**LEGISLATIVE SESSION
ENDS WITH A WHIMPER
COLA Dies**

The Legislature adjourned for the year on Friday, June 19, the earliest adjournment in memory marking what observers agreed was one of the most unproductive sessions ever. Agreement on many key issues, including a proposal to deny parole for first time violent felons, was not reached.

Additionally, the Governor's budget vetoes continue to stand. For a few hours during the closing moments of the session it appeared that the Legislature would enact

separate legislation restoring the 2.5% cost of living adjustment (COLA) for low paid workers serving persons with mental disabilities including those with mental retardation and developmental disabilities.

A COLA restoration bill was passed in the Senate and a companion bill was introduced in the Assembly. Legislative sources said that the two houses had reached agreement and that once the bill was sent to the Governor he was likely to approve it.

As the Senate passed its COLA bill, spirits ran high as prospects for a last minute breakthrough seemed imminent.

But by morning of the last day of the session, word was that the Assembly was having second thoughts about passing the COLA bill. It was off, then on, then off the Assembly's agenda for last minute bills. As the final moments of the session ticked by, the bill continued to linger in committee. And when the session concluded it was still there.

The Assembly's refusal to pass the bill shocked many observers because of the Assembly's outspoken criticism of the Governor's vetoes. The Assembly's inaction seemed based on its position that it would accept either total restoration of vetoed funds or no restoration. Democrats, who control that house, have taken the position that the Governor's vetoes can be used against him during the upcoming Governor's race. Thus, restoration of any veto would allow him to claim that a compromise had been reached, eliminating vetoes as an issue.

Nevertheless, NYSARC's executive director, Marc Brandt, said "we are disgusted by the Assembly's failure to act. There was enormous sympathy among rank and file legislators for the COLA and for the workers who stood to benefit from it. Refusing to pass the bill was an Assembly leadership decision."

Brandt went on to say that "if the Legislature returns to increase its own salaries, we will link the two issues and make them and the public at large aware of their failure to increase the salaries of our employees. What they do for themselves, they ought to do for people who make poverty wages caring for this State's most vulnerable citizens."

Governor would have signed

For his part, Governor Pataki claimed he was ready to sign the COLA restoration bill had it been passed by the Assembly.

According to Governor Pataki, individuals who would have benefitted from the COLA "perform critically important work that directly enhances the quality of life for thousands of mentally disabled individuals and their families..they deserve this pay increase and I was prepared to sign these measures into law if the Assembly had followed the Senate's lead and passed them."

The Governor added that "my only criteria (for approving restorations) was that (they) must be for truly worthwhile initiatives - and that they be enacted while still remaining within the fiscally prudent confines of the \$71.6 billion budget I proposed in January. These cost of living increases would have met those standards. I would have been very pleased to sign them."

Legislation was also introduced in the Assembly to restore \$5.7 billion in community development funding for people on the waiting list added by the Legislature but vetoed by the Governor. No Senate companion however was introduced.

"CONSUMER ORIENTED REFORM EFFORT" DIES Massive Opposition Kills Bill Introduced At The End of the Session

Long anticipated legislation toughening oversight of not-for-profit agencies serving persons with mental disabilities failed to pass either the Senate or the Assembly at the close of the recent legislative session.

The legislation, entitled the Consumer Oriented Reform Effort, was ostensibly the product of special hearings held by Senator Tom Libous (R-Binghamton), chair of the Senate Mental Health And Mental Retardation and Developmental Disabilities Committee in May.

Senator Libous introduced the lengthy bill with only two weeks to go before scheduled adjournment. He then threatened to withhold approval of multi-year "Community Reinvestment" for persons with mental illness unless the CORE bill or Consumer Oriented Reform Effort was passed. Reinvestment allows savings from downsized psychiatric centers to be used for development of community based programs for persons with mental illness.

Mental health advocates were furious. Sources inside the legislature also expressed concern, especially since such comprehensive legislative initiatives, like CORE, can take years to approve.

Among other provisions, CORE legislation limited the use of State funds for total executive compensation, salary plus benefits, to the Governor's salary of \$130,000; proposed that agency surpluses be limited to "reasonable" amounts; expanded the grounds for holding individual board members liable for their actions; and, proposed that the Commissioner promulgate qualifications for executive directors and approve candidates prior to final selection by boards.

Most major not-for-profit groups representing persons with mental retardation and developmental disabilities, including The Interagency Council (IAC), United Cerebral Palsy (UCP) and The New York State Association of Community Residence Agencies (NYSACRA), expressed strong opposition to CORE.

In a letter to Senator Libous, NYSARC also expressed strong opposition to the CORE bill. NYSARC was especially concerned with tactics intended to force passage of the bill, namely making approval of Community Reinvestment contingent upon passage of the legislation. According to NYSARC "while we do not represent the mental health field, the hearts of our parents and family members go out to persons with mental illness, their parents and family members. We empathize with them deeply. To deny them services unless a complex, controversial bill, introduced at the last minute of the legislative session, is rammed through both houses, is to use vulnerable citizens as political pawns."

One of the most controversial provisions of the bill was the cap on executive compensation. In its letter to Senator Libous NYSARC stated "though the Governor's salary sounds like a compelling cap - after all he runs the State - upon examination of his tax returns, appearances and speaking fees make his \$130,000 look like little more than pocket change. And it is also worth noting that many State officials, after combining their salary plus benefits, exceed the proposed cap - over 60 associate and deputy commissioners in OMRDD alone. What about them?"

NYSARC maintained that, for the most part, executive compensation is low in the field of mental retardation. Executive compensation, NYSARC claimed is "quite modest compared to the responsibilities of managing a 24 hour a day 7 day a week multi-million dollar agency charged with serving a highly vulnerable and needy population."

Responding to the CORE bill's proposal to limit surpluses to "reasonable" levels, NYSARC asked "who determines what 'reasonable' is?"

"This legislation is too badly flawed to even attempt to fix. It would be a travesty if the Legislature were to make that attempt, especially during the few remaining days of the legislative session....." -Marc N. Brandt

"For not-for-profit agencies, who are at the mercy of the vicissitudes of the State budget cycle, surplus funds are" especially important. They "have meant the difference between solvency and insolvency or, at the very least, avoiding working capital loans, the high interest costs of which are passed onto the State."

What especially concerned NYSARC however was that providers of services to persons with mental disabilities were being singled out for especially tough treatment to the exclusion of all other not-for-profit fields. Said NYSARC, the bill "overlooks all other for-profit and not-for-profit entities which also receive public funds. No doubt that oversight is attributable to the enormous political clout of other industries, especially the hospital industry and its guardian angel, the medical profession."

NYSARC concluded by stating that "this legislation is too badly flawed to even attempt to fix. It would be a travesty if the Legislature were to make that attempt, especially during the few remaining days of the legislative session....."

Reportedly, Senator Libous is determined to see the CORE bill passed no matter how long it takes. This should be interesting.

PERSONS IN HOMELESS SHELTER HEIGHTEN WAIT LIST CONCERN

The waiting list of persons with mental retardation in critical need of residential care in New York State is between 6,000 and 20,000 depending on whose numbers are believed. What's not clear is whether those numbers include 26 adults recently discovered in homeless shelters in Westchester County. Or is it 138 persons with mental retardation living in homeless shelters across the State?

The controversy over persons with mental retardation living in homeless shelters for lack of appropriate residential care exploded with the discovery of individuals in Westchester County's homeless shelters. Officials claim that they ended up there after living with aged parents who could no longer care for them or after having

wandered from group homes. The greater concern among advocates is that persons with mental retardation are an easy mark for other shelter residents, including drug and alcohol addicts and ex-convicts.

"If there are 25 here, then there are 250 in New York City," said Assemblyman Richard Brodsky, a Westchester Democrat. "What sort of society takes mentally retarded people and forces them in homeless shelters?"

Brodsky was quick to discover an official document from the Office of Mental Retardation and Developmental Disabilities purporting to show that indeed, there are a total of 138 persons with mental retardation classified as homeless throughout New York State. The Assemblyman quickly called a press conference to blast the Governor over the issue.

Said Brodsky: "The list we are releasing today identifies the developmentally disabled that were said not to exist across the state... a long term effort must be made to build and maintain group homes which will accommodate the community's growing need for housing."

When asked how he obtained the document from OMRDD, Brodsky replied "no comment."

OMRDD commissioner Tom Maul was quick to blast Brodsky for releasing information he described as dated and inaccurate. Maul stated that Brodsky was playing politics with the issue and that the real number of homeless persons with mental retardation was far lower than claimed.

According to Maul this is a "reckless use of outdated and inaccurate information for purely partisan political reasons."

But Brodsky stated that "advocates are telling us that this may be the tip of the iceberg."

Other Westchester legislators jumped into the fray. "It's a sad commentary that people with disabilities are being dumped in homeless shelters," said Westchester State Senator Nicolas Spano, a Republican. "Everybody should recognize that we are all to blame." Spano introduced legislation making placement of persons with mental retardation discovered in homeless shelters a priority. However, the bill went nowhere during the recently concluded legislative session.

While advocates are concerned about the issue, many

are also concerned that Spano's approach could force persons in critical need of out of home care living at home with elderly parents to wait even longer for a placement. "We need to find a solution to the problem," said NYSARC's executive director Marc Brandt, "that doesn't make other problems worse."

Brandt additionally told The New York Times "years ago we said this could very well happen. The waiting list issue is growing. The option of going into an institution for people with mental retardation is no longer available nor should it be."

FROM THE COURTS

LAWSUIT AGAINST HERTZ: ADA NOT VIOLATED

Previously touted as a potential landmark case, a suit against Hertz, Inc. went down in defeat when a Michigan federal court judge ruled the company did not violate the Americans with Disabilities Act when it terminated two job coaches for inappropriate on the job behavior.

The suit resulted when Hertz dismissed two supported work employees after discovering their job coaches "passionately kissing and fondling each other in a car."

The two employees, Donald Klem and Kenneth Miller were hired by Hertz to pick up trash in one of the company's car lots in Detroit's Wayne County Airport. Klem and Miller have mental retardation. The two are served by the Arkay, Inc agency, which agreed to provide Hertz with the job coaches if the company agreed to hire the two men.

The company agreed that Klem and Miller were fine employees. Nevertheless, Hertz fired the two men when their job coaches were told to leave the Company's premises and never returned. The EEOC took up their case, arguing that Hertz did not fulfill its obligations under the terms of the ADA. The EEOC maintained that job coaches constitute reasonable accommodation which Hertz was obligated to provide. The EEOC further argued that Hertz was not within its rights to dismiss Klem and Miller because of the misconduct of their job coaches. Rather its obligation was to replace the job coaches.

The Court however rejected the argument that Hertz was obliged to provide job coaches. Instead the Court said that "this was not a case of discrimination against

handicapped persons but rather a breakdown in Arkay's procedures in affording assistance to handicapped people."

Neither did the court agree that a full time job coach for each supported employee was the type of "reasonable accommodation" envisioned by the ADA. It noted that it is unreasonable to require two people to perform the job of one. It further noted that EEOC guidelines only require such arrangements on a temporary, not permanent basis.

Finally, the Court chastised the EEOC for its decision to sue Hertz. The Court said "Hertz should be complimented for what it tried to do here - not sued. How does the EEOC expect to further the goal of assisting handicapped persons that employers will hire if it seeks to punish them for their generosity?"

VETO BATTLE CONTINUES IN COURT Assembly Speaker Sues Governor

With the statement that the Governor's vetoes "are beyond his constitutional authority and in that regard are unique in the history of New York State," Assembly Speaker Sheldon Silver filed suit against the Governor in Manhattan State Supreme Court.

The Republican Senate, which initially expressed outrage against the vetoes, did not join in the suit which was criticized by Senate Majority Leader Joe Bruno. "It is unfortunate the Legislature and the executive can't work together to resolve the differences over budget language, the budget process and related issues without resorting to legal action," said Bruno.

Other Republicans weren't so diplomatic. The suit is a "waste of time and taxpayer money," said the State Assembly's Republican Leader, John Faso.

"This is a blatantly partisan political act, but unfortunately it is what we have come to expect from the Speaker," said Pataki spokesman Michael McKeon.

The suit doesn't concern specific monetary funds - line item spending - added by the Legislature and vetoed by the Governor. Rather it contests the Governor's authority to line item veto legislative language additions in a separate language bill which governs how budgeted funds can be spent. Even if the Speaker wins the case, it is uncertain how much, if any, vetoed spending would be tored.

Silver argues that in 55 instances, the Governor illegally vetoed language that restricts appropriations

contained in the FY 98-99 budget. The Speaker admits that the Governor can line item veto appropriations, but has exceeded his line item veto authority by deleting language.

Included in the 55 vetoes was language which prohibits the Governor from closing a workers compensation office in Brooklyn and transferring its employees to Peekskill, the Governor's home town, in order to create another workers compensation office. Political turf wars over the distribution of State employees has been common during the Pataki Administration.

Silver expects the case to ultimately be decided by the State's highest court, the Court of Appeals.

AROUND THE NATION

SPENDING: NEW YORK VS THE NATION State's Mental Retardation Budget Largest By Far

According to David Braddock's 1998 *The State of The States In Developmental Disabilities*, by practically every measure, New York State leads every other state in the amount it spends on people with mental retardation and developmental disabilities.

According to Braddock's most recent report, New York State spends approximately \$3.2 billion annually on persons with mental retardation and developmental disabilities, more than any other state in the nation. Next in line is California, which, though nearly twice as big, spent \$2.4 billion or 24% less than New York. After California, Pennsylvania spends \$1.3 billion or 65% less than New York.

In fact, adjusted for population, New York's per capita expenditures for programs exceed California's by 170%. And comparable New York expenditures exceed other leading states by huge margins including Arizona 180%; Florida 750%; Illinois 400%; Mass. 55%; Michigan 75%; Minnesota 40%; New Jersey 250%; Oregon 260%; Pennsylvania 130%; Texas 370%; Wisconsin 180%; and, Colorado 180%.

New York's "fiscal effort," the percentage total personal income spent serving persons with mental retardation and developmental disabilities, exceeded every state except the District of Columbia and Rhode Island.

Braddock states that "New York has been a leader in fiscal effort for total MRDD spending during the 20 year course of this study."

Braddock also notes that from 1992-96 New York's "inflation adjusted community spending...advanced 48% while institutional spending declined by 30%. Nationally community spending increased 41% (during the same period) while institutional spending declined 12%...The population of New York's institutions declined 51%...This was the largest number of people deinstitutionalized in a single state during that period and represents the continuation of New York's long term deinstitutionalization efforts."

The State of the States in Developmental Disabilities has been published annually for the past five years. Like the previous four editions, the 1998 edition was edited by David Braddock, the nation's foremost expert on financing trends in developmental disabilities. Braddock is with the Department of Disability and Human Development at the University of Chicago at Illinois.

Copies may be obtained by contacting The American Association on Mental Retardation Research Monographs and Book Publication Program, 444 N. Capitol Street, NW, Suite 486, Washington, D.C. 20001-1512.

***NYC SUED OVER PLANS
TO MOVE WELFARE RECIPIENTS
WITH DISABILITIES TO WORK***

"The City (New York) appears to be rushing to force people into jobs who the City's own doctors have found to be disabled," stated the Legal Aid Society which is suing New York City for requiring some welfare recipients with disabilities to work as part of its Workfare Program. Workfare moves people from welfare to work to comply with federal work requirements enacted as part of welfare reform.

"Workfare is not rehabilitation. It's sweeping streets, cleaning out wastebaskets in the courthouse," said Legal

Aid attorney Susan Steinberg.

However, the City's mayor, Rudolph Giuliani said "advocates used to argue...that it was a shame that people who had disabilities were not given work opportunities, given training for work and weren't allowed to lead as productive a life and self-reliant a life as possible."

Giuliani added that Workfare will "enroll them in work experience programs where they will get training, where they will get help and where they will be moved along to the level of self-sufficiency they can reach...it's a sensible way to proceed."

Workfare requires welfare beneficiaries to work 20 hours a week. There are about 36,000 persons in the program which is the largest of its type for any city in the nation. About 1,000 mothers with disabilities are expected to be enrolled shortly. Eventually, if that effort succeeds, 30,000 mothers with disabilities could be included. The City will collaborate with not-for-profit agencies serving persons with disabilities.

The program began just recently. Women with disabilities will be screened to see if they can perform Workfare type jobs - from painting park benches to cleaning litter - with appropriate supports.

According to Jack Tweedie, of the National Conference of State Legislatures, the debate in New York City mirrors similar debates in cities around the country.

"The ethic has changed," said Tweedie. "In the past the assumption was there were large groups of people who couldn't make do for themselves...Now the assumption is they can fend for themselves with assistance."

Debra Sprole, a Giuliani spokeswoman, explained "instead of leaving some people isolated and marginalized from society, based on the assumption that they have nothing to contribute...we are now saying the opposite thing. There are individual talents and abilities people have, even in a disabled community."

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