



Americans with Disabilities Act

Disability Related Access for

Inmates and Visitors

Practical Guide

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Guide Purpose

This guide was first produced in 2019. The updates of this booklet include a more comprehensive and practical guide that is designed to be utilized by local, state, and federal government correctional institutions, government-funded private detention facilities and other corrections contractors, in order to educate and train staff regarding their Americans with Disabilities Act (ADA) and other civil rights responsibilities towards both inmates and visitors who have disabilities.

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The contents of this guide do not necessarily represent the policy of the U.S. Department of Health and Human Services, and endorsement by the Federal Government should not be assumed.

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The Southwest ADA Center is a program of ILRU (Independent Living Research Utilization) at TIRR Memorial Hermann. The Southwest ADA Center is part of a national network of ten regional ADA Centers that provide up-to-date information, referrals, resources, and training on the Americans with Disabilities Act (ADA). The centers serve a variety of audiences, including businesses, employers, government entities, schools, and individuals with disabilities. Call 1.800.949.4232 to reach the center that serves your region or visit www.adata.org.

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INTRODUCTION

The Immense Need for Awareness and Training

According to the U.S. Bureau of Justice Statistics (BJS), an estimated 38 percent of state and federal inmates had a disability in 2016, meaning more than 540,000 people with disabilities are incarcerated across the nation.¹ This includes inmates with psychiatric disabilities exceeding the number in state psychiatric hospitals tenfold² and an estimated tens of thousands of deaf people that are currently incarcerated.³ The Centers for Disease Control reports that it is estimated that 25 to 87 percent of people in corrections have experienced a traumatic brain injury (TBI) as compared to 8.5% of people in the general population.⁴ The BJS noted that 40% of local jail inmates report having at least one disability.⁵ The BJS also reported that the most common disabilities among the total state inmate population are cognitive (24%), ambulatory (12%), vision (12%), and hearing (10%).⁶

This number will increase as inmates gain various conditions through the natural aging process and other means. A report conducted in 2014 by the Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation reveals that inmates gain disabilities at a higher rate than people who are not incarcerated.

Inmates with disabilities who need accommodations are often overlooked, ignored, or even punished for their need of equal access. Abuse and neglect can be common features of prison life at higher rates for inmates with disabilities. The time they serve is harder, with more sanctions imposed and less access to positive programming than other inmates. Reported cases in 2016 describe situations in 21 states where facility staff seized wheelchairs, canes and walkers from inmates and denied them accommodations, services and programs in violation of the Americans with Disabilities Act (ADA).⁷

According to John Wodatch, the head of the Disability Rights Section of the U.S. Department of Justice's Civil Rights Division from its inception in 1995 until 2011, the majority of the thousands of annual complaints the office received were from inmates with disabilities, and nearly all of them were substantiated.⁸ Due to these discriminatory practices, inmates with disabilities can end up living in a "prison within a prison."⁹

Additionally, about 85 percent of incarcerated youth have a disability.¹⁰ These youth with disabilities (often undiagnosed) are a unique and particularly vulnerable group in juvenile facilities. They are referred to the juvenile justice system earlier than youth without disabilities and they are referred for more serious crimes and experience shorter survival times before they recidivate.¹¹

States and local governments have increasingly turned to their correctional systems to take on tasks that they are not necessarily equipped or educated to handle. These systems must meet the challenges presented by the inmate population with various disabilities to ensure basic human,

constitutional, and civil rights. This includes compliance with the ADA, which prohibits discrimination against people with disabilities, and incorporating ADA best practices that offer equal access and opportunity to services, activities, privileges, and programs.

Visitors with disabilities often face barriers when trying to visit an inmate because the facility fails to accommodate their disabilities. Barriers include a lack of accessible parking, inaccessible entrances and visitation areas, and a lack of effective communication or modifications of policy and accommodations that would make the facility accessible to the visitor.

The Americans with Disabilities Act (ADA)

The ADA was signed into Law in 1990 and contains five titles.

- **Title I Employment** prohibits discrimination on the basis of disability in employment.
- **Title II State and Local Government** gives people with disabilities an equal opportunity to benefit from all programs, services, and activities.
- **Title III Public Accommodations** covers businesses and nonprofits and their access obligations to people with disabilities.
- **Title IV Telecommunications** requires phone companies to provide telecommunications relay services for people who have hearing or speech disabilities and closed-captioning of Federally funded public service announcements.
- **Title V Miscellaneous** provides instructions to Federal agencies involved in regulating and enforcing the other Titles, prohibits against retaliation and coercion, and more.

Disability Civil Rights Apply to Correctional Institutions

Title II of the ADA states that no individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity, including correctional institutions.

The U.S. Supreme Court confirmed that Title II ADA does apply to state prisons in their treatment of prisoners in [*Pennsylvania Department of Corrections v. Yeskey*](#), 524 U.S. 206, 213 (1998) despite the state’s arguments that prisoners did not “benefit” from imprisonment. The Supreme Court also recognized that Congress responded to the history of mistreatment of prisoners with disabilities by extending Title II’s protection for them beyond violations of the Eighth Amendment’s prohibition against cruel and unusual punishment in [*United States v. Georgia*](#), 546 U.S. 151 (2006).

Section 504 of the Rehabilitation Act of 1973 applies to federal, state and private prison facilities receiving federal funding, and programs or activities conducted therein, and essentially provides the same protections as the ADA.

Title II of the ADA applies to correctional institutions regarding **facility visitors** with disabilities. Section 504 also applies if the institution receives federal funding.

Government-Funded Contractors

Correctional institution contractors are obligated to carry out the government's ADA Title II and Section 504 obligations. Contractors, whether they are on site (such as medical or educational), private correctional facilities, county facilities, community correction centers, or off site medical care and other programs that serve inmates and visitors, must carry out the facility's ADA Title II obligations, given that they act as an instrumentality of the correctional institution. It should be noted that the correctional facility **cannot contract away liability**. If a contractor violates the ADA or Section 504, both the correctional facility and the contractor can be held accountable for the violation.

[Marks v. Colorado Department of Corrections](#), 958 F.3d 1001 (10th Cir. 2020)

Marks is an individual with spinal stenosis who was admitted to a community corrections program run by a private contractor. After she fell in the shower and exacerbated her disability, the contractor returned her to prison saying she could no longer work. The district court found for CDOC, because the decision was made by a contractor. The 10th Circuit reversed as the ADA and Section 504 "prohibit public and federally funded entities from discriminating against disabled persons in programs like community corrections. These prohibitions apply regardless of whether the entities operate the programs directly or indirectly."

See also [Armstrong v. Schwarzenegger](#), 622 F.3d 1058 (9th Cir. 2010) where the Ninth Circuit said that California continued with its title II duty to state inmates who were housed in county jails and could be held liable for a county's failure to provide those inmates with reasonable accommodation for their disabilities.

See also [The United States' Findings and Conclusions Based on its Investigation of the George W. Hill Correctional Facility under Title II of the Americans with Disabilities Act](#), DJ # 202-62-241 that states "Delaware County is liable for violations of Title II of the ADA even where those violations were carried out by contractors."

It is worth noting that the **Civil Rights of Institutionalized Persons Act (CRIPA)** authorizes the U.S. Attorney General to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, and juvenile correctional facilities. The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are "egregious or flagrant," residents are subjected to "grievous harm," and are part of a "pattern or practice" of resistance to residents' full enjoyment of constitutional or Federal rights included in Title II of the ADA and Section 504 of the Rehabilitation Act (ADA/504).¹²

Given that corrections systems must ensure basic human, constitutional, and civil rights which includes compliance with the ADA, it is imperative that all facility staff, including administrators, correctional treatment specialists, compliance officers, medical and other staff, as well as contractors, should have a **functioning knowledge of ADA/504 requirements** as it pertains to the institution. Sufficient ADA/504 ongoing training should be included in all correctional officer and other staff instruction both as part of basic training and at minimum annually.

Who Is Protected Under The ADA?

Assuring that the correctional facility is complying with the ADA begins with the knowledge of which inmates and visitors are covered under the ADA. Not everyone with a medical condition is protected by the ADA. In order to be protected, a person must have a disability as defined by the law.

An individual may establish coverage under any one or more of the three prongs of the definition of disability:

➤ **A physical or mental impairment that substantially limits one or more major life activities.**

- Note that the term “substantially limits” under the ADA Amendments Act shall be construed broadly in favor of expansive coverage and is not meant to be a demanding standard. Many conditions by their inherent nature will give rise to a substantial limitation of one or more major life activities. With respect to these types of impairments, the necessary and individualized assessment of ADA coverage should be particularly simple and straightforward.

➤ **A record of such an impairment.**

- This means that the individual has a history of, or has been misclassified as, having a mental or physical impairment that substantially limits one or more major life activities.

➤ **Is regarded as (or treated as or is perceived as) having an impairment that substantially limits one or more major life activities even if the individual does not, in fact, have such an impairment or the impairment is minor.**

- This means that the individual may not have any impairment or has a minor impairment but is discriminated against by an entity because it believes the individual has such an impairment.

Also, a public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual because of a **relationship or association** with an individual with a disability. The key is whether the correctional facility discriminatory actions are motivated by the individual's relationship or association with a person who has a disability.

Major life activities may include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, concentration, etc. This also includes the operations of major bodily functions such as the immune system, normal cell growth, digestive system, etc. Hepatitis C or HIV are examples of a substantial limitation of one or more major bodily functions.

Temporary, episodic (conditions that result in sporadic and usually irregular symptoms) or **in-remission** impairments (such as cancer) are covered if these factors substantially limit a major life activity when active. Episodic condition examples are epilepsy, migraines, post-traumatic stress, and psychiatric conditions.

[Hamilton v. Westchester County](#), 3 F.4th 86 (2nd Cir. 2021)

The 2nd Circuit ruled that a dislocated knee injury can be actionable under the expanded definition of the ADA Amendments Act even if the duration of the disability is less than six months. The court joined the 1st, 4th, and 7th U.S. Circuit Courts of Appeals in holding that disabilities lasting or expected to last less than six months could be a covered disability under the ADA.

The definition of disability under the **ADA Amendments Act of 2008** is intended to have **broad coverage in favor** of individuals with disabilities and that Congress stated clearly that the primary focus in cases brought under the ADA should be on whether covered entities have **complied with their obligations**.

Individuals NOT Covered Under the ADA

The term “disability” does not include pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania. Individuals who have psychoactive substance use disorders resulting from **current** illegal use of drugs are also not protected under the ADA. For instance, the Deaf Inmate who has an impulse control disorder that is characterized by recurrent irresistible urge to steal will not be able to seek ADA protection regarding their kleptomania, however, they can seek coverage as it pertains to their deafness.

Please note that an individual who has a history of being an addict and is no longer using, would be covered under having a record of such an impairment. It is important to note that the ADA applies to addiction to alcohol and to the illegal use of drugs differently. Addiction to alcohol is generally considered a disability whether use of alcohol is in the present or in the past. For people with an addiction to opioids and other drugs, the ADA protects a person in recovery who is no longer engaging in the current illegal use of drugs.

Determining Who Is Covered

Disabilities can include chronic illness, various physical related disabilities/hearing and visual impairments, psychiatric conditions, autism, intellectual/developmental disabilities (I/DD), etc.

Incoming inmates with disabilities can be **poor historians** and may not have had previous medical intervention due to past abuse, cultural or language barriers and fears, or other factors resulting in the lack of medical documentation or they may not have an awareness that they have a disability such as, for example, a traumatic brain injury.

A best practice is to have specifically trained and supervised corrections staff, including correctional treatment specialists, conduct thorough screening interviews of all inmates upon admission to help identify those individuals with disabilities with ongoing assessments, if needed.

Also, be sure to obtain an inmate's disability related records from previous incarceration facilities, if applicable. In addition, it is important to follow up with inmates as they may develop disabilities during incarceration and will then have ADA rights. Be aware that inmates may tend to hide their disabilities for a range of reasons and may only become known in a variety of ways such as during a disciplinary procedure where the troubled behavior is actually disability related.

Best Practice Three Step Process of Determination

- 1) Does the **person have** a physical or mental impairment that involves vision, speech, hearing, intellect, emotion, learning, bodily functions, physical actions, such as, for example, palsy, epilepsy, Muscular Dystrophy, Multiple Sclerosis, cancer, diabetes, migraines, amputation, autoimmune issues, chronic pain, psychiatric, TBI, etc.,
- 2) that **substantially limits** their ability to perform major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, getting canteen, accessing recreation, holding employment, cleaning their cell, etc.,
- 3) and **obtain verification** from medical as to a "record" of any impairment or obtaining verification through observation either through staff or personal observation and through the "interactive process" communications with the inmate.

Identifying I/DD Inmates

According to the Arc's National Center on Criminal Justice and Disability (NCCJD) identifying a potential disability among the Intellectual/Developmental Disability inmate population can be challenging. NCCJD states that these individuals **often face prejudice** and a **lack of understanding** and **resources** when they do become entangled in the system, including incarceration. The lack of experience and accurate knowledge about I/DD can lead to misidentification of disability, a heightened risk of false confessions, inaccurate assumptions about competency and credibility, inappropriate placement in corrections, and may tend to unknowingly waive their rights. Correctional staff can seek training and technical assistance through the NCCJD's [*Pathways to Justice*](#) program.

Visitors and ADA Coverage

In determining if a **visitor** is covered under the ADA/504 it will depend on the individual situation. Only necessary disability inquiries are allowed as it relates to an accommodation. It's up to each public entity to determine what information is "necessary" in compliance with the ADA.

For more information on ADA coverage:

- [Questions and Answers about the Department of Justice's Final Rule Implementing the ADA Amendments Act of 2008](#)
- [EEOC: Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008](#)

Gender Identity and Corrections

Given that correctional facilities are beginning to acknowledge the existence of the gender identity spectrum, it is important to recognize that the ADA does not protect people based on their gender identity but on disabilities that could be related to it, such as **gender dysphoria**.

Doe v. Massachusetts Department of Corrections, 17-12255-RGS (D. Mass. June 14, 2018)

Doe is a transgender woman with gender dysphoria (GD) who requested transfer to a women’s prison and other injunctive relief including no strip searches by male officers or showering in the presence of men and to not treat her differently than other women. The ADA explicitly excludes protection of “gender identity disorders not resulting from physical impairments.” MDOC argued that GD was not a disability under the ADA because it fell under that exclusion. The court concluded that GD was not categorically exempted from the ADA and found that GD may result from physical causes, namely, hormonal and genetic drivers. The court issued a preliminary injunction that ordered the use of female correctional officers when conducting strip searches that are consistent with staffing concerns, union agreements and absent exigent circumstances, and housing the plaintiff in an individual cell with separate shower times. The parties reached an agreement where she was transferred to women’s facility.

Williams v. Kincaid, 45 F.4th 759 (4th Cir. 2022)

Kesha Williams, a transgendered woman with gender dysphoria, spent six months incarcerated in the Fairfax County Adult Detention Center (FCADC). In her complaint, Williams alleged that FCADC denied her the medical treatment and accommodations she required as a transgender woman diagnosed with gender dysphoria and denied her opportunities provided to inmates who were not transgender and did not suffer from gender dysphoria. During the evaluation, she informed the medical provider that she was transgender, lived full-time as a woman, and had been on hormone treatment for the past 15 years. Following the evaluation, FCADC assigned her to the male side of the facility and made her wear the uniform worn by male inmates. Williams claimed that FCADC delayed providing her hormone treatment and never permitted her to receive mental health counseling or treatment. Williams experienced harassment by FCADC employees based on her gender identity throughout her incarceration. She was also not transferred into the Workforce Program for several months, despite her repeated requests and several cisgender inmates who had been incarcerated for shorter periods of time getting access. The Fourth Circuit explicitly differentiated being transgender from having gender dysphoria and ruled that people with gender dysphoria are protected under the ADA.

Qualified Individual with a Disability

Qualified **inmates** with disabilities should have access to all programs, services, activities, and privileges to which they would otherwise be entitled, whether mandatory or voluntary. The same requirements apply to **visitors** who are eligible to participate in visitation programs, services, activities, and privileges.

Correctional institutions must ensure that qualified inmates with disabilities **shall not be excluded** from participation in, or be denied the benefits of, the services, programs, or activities of a facility because it is inaccessible to or unusable by individuals with disabilities. This includes correctional facilities developing non-discriminatory eligibility criteria for early release, parole, or other re-entry programs.

A **qualified** individual with a disability is a person who can meet the essential eligibility requirements of a program and can perform the essential functions of the program with, if needed, reasonable modifications to rules, policies, practices and/or with the removal of architectural, communications, or transportation barriers.

An example of “qualified” would be if a work program has an eligibility requirement that a person must have a release date within five years in order to participate, but the disabled inmate’s release date is 10 years away, then that inmate does not meet the eligibility requirements to partake in the program. If the disabled inmate is five years from release date and can perform the essential functions of the program, with, if needed, accommodations, such as the removal of certain architectural and transportation barriers, then they can participate in the program.

Make sure requirements are truly absolutely **necessary** if they tend to screen out individuals or a class of individuals with disabilities. This is addressed in more detail in the Program Access section.

Generally, facilities, for example, shall NOT place inmates with disabilities:¹³

- in inappropriate security classifications because no accessible cells or beds are available,
- in medical areas unless they are receiving medical care or treatment,
- in facilities that do not offer the same programs as facilities where they otherwise would be housed, and
- in distant facilities where they would otherwise not be housed that would deprive them of visitation with family members.

Modification vs. Accommodation Terminology

It must be noted that the common terminology within the correctional system is “accommodation” when providing disability related barrier removal for inmates and visitors, rather than the use of the ADA Title II term “modification of policy.” Therefore this guide uses these **terms interchangeably** with the same meaning of working toward disability related barrier removal to create equal access and opportunity.

Designated Person Who Ensures Compliance

Correctional institutions must have an appointment of **one or more** designated persons who has the **authority**, as well as the ability to navigate the prison administrative system, in order to **ensure**

compliance with Section 504 and the ADA, as amended, including ensuring the investigations of complaints on behalf of inmates and visitors.

An appropriately trained and qualified individual(s) is one who has been designated by the warden/superintendent or other authority **to coordinate efforts to comply and carryout responsibilities** defined by the ADA and Section 504. This person is usually identified as the ADA or 504 coordinator. Personnel, such as compliance officers that are currently assigned other types of compliance related duties, may be able to assume ADA compliance responsibilities. In any case, whoever is appointed the ADA/504 coordinator(s), they should be able to devote the needed time, availability, and consistency to ensure compliance. This includes being readily available to the inmates, visitors/public, and staff.

The vital role of the ADA/504 coordinator is to make sure civil rights are not violated and should include the following approach. When making a decision and/or taking any actions regarding an **inmate** with a disability that will **adversely** affect this individual in **any way**, always determine if this person's disability has **anything** to do with the decision or action, then go from there in determining ADA compliance. The same goes for **visitors** with disabilities.

The institution must keep **formalized documentation** of their ADA compliance efforts, which can be completed by the ADA/504 coordinator(s). Also, keeping good documentation regarding how program access is provided to inmates with disabilities to create equal access to all aspects of incarcerated life, and equal visitation opportunities to visitors with disabilities, can show good faith efforts.

The public entity **must make available** to all interested individuals the name, office address, email, and telephone number of the employee or employees who are designated to ensure ADA compliance (28 C.F.R. 35.107). It should be easy for the public/visitors and inmates to identify and contact the institution's ADA Coordinator(s).

The Richness of Resources and Relationships

It is a best practice and institutional standard that the **ADA/504 coordinator** “**develop relationships** with, and use the expertise of, institutional staff, advocacy groups, nonprofit organizations, agencies of government, and others that have relevant knowledge and experience.”¹⁴

The richness of extensive resources and relationships can greatly help with the **accommodation determination process** for inmates and visitors with all types of disability related needs in order to ensure the removal of barriers to equal opportunity. The network can provide technical assistance to the ADA/504 coordinator and other staff, including the incorporation of best access practices, knowledge of assistive technology and other barrier removal solutions. Members of the network can also provide ADA training to correctional staff and their contractors.

This network could include the **ADA National Network** which is comprised of 10 federally funded regional ADA Centers that provide information, guidance and training on how to voluntarily

implement the ADA in order to support the mission of the law to ensure equality of opportunity and full participation for individuals with disabilities. All guidance and training to individual entities is confidential. To find your ADA Center go to www.adata.org or call 1-800-949-4232.

Also, by cultivating a wide variety of **community relationships** and **resources** the ADA/504 coordinator can create “**circles of support**” for inmates with disabilities, particularly those with TBI, I/DD, psychiatric conditions, and persons on the autism spectrum. This vital accommodation is formed by a group of community (usually volunteer driven and can be comprised of people with the same or similar disability) and other appropriate participants and organizations who regularly meet with the inmate to assist them with safely adapting and participating in incarcerated life. This group can also contribute to parole planning and preparations to ensure that housing, employment, benefits, treatment, programming, medical and other needs are met leading to successful community re-entry.

Examples of local and state community resources that the ADA/504 coordinator and other staff can establish relationships are:

- Centers for Independent Living ([directory](#))
- State Commission for the Blind / Division of Vocational Rehabilitation
- State Commission for the Deaf and Hard of Hearing
- Governor’s Commission on Disability
- State Agency on Developmental Disabilities
- State Brain Injury Advisory Council
- State Assistive Technology Program (<https://ataporg.org/> and <https://at3center.net/state-at-programs/>)
- State Schools for the Blind and Deaf
- [The Arc](#)
- [University Centers for Excellence in Developmental Disabilities](#)
- [National Disability Rights Network](#)

Notice of Rights / ADA Grievance Process / Filing an ADA Complaint

Notice of Rights

Notice of Rights must be **widely publicized** to inmates and visitors. This includes providing a means of effective communication, such as alternative formats, to inform those inmates and visitors who have disabilities which directly impacts their communication (Deaf, blind, I/DD, etc.). Case managers and correctional treatment specialists can play a key role at admission in providing **inmates** Notice of ADA rights. These rights should also be widely and clearly publicized to **visitors** via the website (homepage or obvious link), in the visitor rules, posted in visitation areas, and more. The notice should either include the ADA grievance process or how to obtain these procedures.

Contractors and Notice of Rights

This obligation carries through to any contractor that is providing programs and services on behalf of the correctional facility, such as a medical provider. The contractor **should include** in their publicized ADA Notice of Rights who in the correctional entity is the contact who handles ADA/504 grievances.

ADA Grievance Process

Correctional institutions must establish and implement **inmate** ADA complaint grievance procedures (§35.107) to address disability-related complaints, providing for **prompt** and **equitable resolutions**. Grievance procedures meeting the same legal requirements must also be adopted for **visitors**.

Filing a Complaint

Inmates can file a complaint with the U.S. Department of Justice (**USDOJ**) and/or bring a private lawsuit in court. However, an inmate may not file a lawsuit without first going through the steps designated by the Prison Litigation Reform Act. The USDOJ's Administrative Remedy Program grievance requirements apply to all federal inmates regardless of where they are housed (local, state, federal, or government funded facilities). Once the Administrative Remedy Program requirements have been exhausted, the inmate may file in court.

All correctional institutions should ensure that the **provision of accommodations**, when needed, is given to inmates with disabilities in order to prepare and process a request or an appeal. An example could be modifying requirements, such as the rules that require requests and appeals to be in writing and on specific forms, in order to account for and create access for inmates with disabilities that affect their communication.

Visitor Grievance Process

The ADA requires a grievance process for visitors who believe that they have been discriminated against on the basis of disability. This notification and procedure could be included in the visitor signature form that contains the visitation rules and regulations. However, the notification of grievance should be presented in a manner **where it is easily noticeable** to the visitor. As with inmates, the facility should ensure that the **provision of accommodations**, when needed, is given to visitors with disabilities in order to prepare and process a request or an appeal.

Visitors can choose to utilize the correctional institution's visitor grievance process and/or file with USDOJ or bring a private lawsuit in court.

Note that a **third party**, such as an inmate's or a visitor's family member, **can file a complaint** if they know of and believe that the inmate or visitor has been discriminated against on the basis of disability by the institution.

Who Should Be Involved in the Grievance Process?

Who should the ADA complaint go to, who decides resolution, and who should be involved in the appeal? Possible options are the ADA/504 coordinator, compliance officer, warden, or the department secretary. Be aware of possible **conflicts of interests**. For example, if the ADA/504 coordinator is the one who receives and approves accommodations, this should make them ineligible to resolve the formal grievance.

Any and all correctional staff involved in the grievance process should be fully **educated** in Title II of the ADA, be able to address the complaint in a **timely** and **fair** manner and have enough **authority** to resolve the complaint.

What Could Grievances Be About?

Issues could include:

- effective communication (i.e., websites, ASL interpreters, or alternative formats),
- modification of policy/accommodation,
- physical access,
- program access issues,
- disparate treatment,
- exclusion/segregation, or
- disability-related harassment.

Creating and Implementing the Grievance Process

Consider the following:

- the who, when, how, and where in filing a complaint;
- providing alternative means (accommodations), where needed, to ensure access to the process;
- confidentiality, time frames, investigation, notification, conciliation processes;
- appeal process and final decision; and
- in cases of denial, what can then be done to remove the disability related barrier.

What Are the Consequences of a Slow or Nonresponsive Complaint Process?

A disability related barrier can cause irreparable harm to the individual with a disability. To prevent lasting harm the ADA requires a complaint process to provide a **prompt** and **equitable** resolution. Keep in mind that, for example, 15-day window increments in the procedure to respond and process a complaint may be too long depending on the particular situation. The appeal procedure should accommodate the complainant where they can easily and quickly “move up” the ladder of authority to resolve the issue.

The ADA Grievance Process and the Administrative Remedy Procedure

If the facility's ARP includes the incorporation of the ADA grievance process, it is imperative that the ARP encompasses the following elements:

- Clear delineation of the procedures and timeline for **prompt** and **equitable** resolutions of disability-related complaints, in order to ensure that the ADA rights of disabled inmates are safeguarded.
- Provision for the disabled inmate to request and receive **accommodations** to ensure equal participation in all relevant procedures.
- Explicit delineation of the procedure that allows a **third party**, such as a family member of the inmate or another inmate, to file a complaint on behalf of the disabled inmate, while adhering to established requirements.
- Involvement of correctional staff who are fully **versed in Title II** of the ADA, to ensure their competent participation in the grievance process as it pertains to disability-related matters.

TIP: An effective grievance process can reveal ADA compliance weaknesses, which can be included and addressed in the institution's ongoing ADA evaluation and transition plan. It may also help to reduce formal grievance filings with the USDOJ and/or private lawsuits.

For more information see the USDOJ's ADA Best Practices Tool Kit for State and Local Governments, [Chapter 2 - ADA Coordinator, Notice and Grievance Procedure: Administrative Requirements Under Title II of the ADA](#).

For more information on federal grievance requirements see the Federal Bureau of Prisons' [Management of Inmates with Disabilities](#) and [28 C.F.R. § 39.170, Compliance procedures](#).

Also see Federal Bureau Prison [Administrative Remedy Program 1330.18 Statement](#).

Policy and Procedures Equals Access

Inmates with Disabilities

The function of corrections involves the **three C's of care, custody, and control**. Within these perimeters and goals, the facility should **anticipate and prepare** for disability related needs which involves up-to-date ADA evaluation and transition planning leading to continuing necessary changes to ensure accessibility in all aspects of incarcerated life.

The ADA regulations require public entities to ensure that interested persons, which would include inmates and visitors with disabilities, are able to obtain information as to the **existence and location** of accessible services, activities, facilities, and equipment (see C.F.R. § 35.163; see also 28 C.F.R. § 35.106). This information should be widely publicized which can be included in the booking stage in a jail or the prison's inmate handbook and orientation, postings, websites, in the visitor rules, etc.

It is a best practice to develop detailed policy and procedures on how an inmate can request an accommodation, which can be **made at any time**, and how the corrections facility will process that request. Make sure to include a specific process of granting and providing or denying the request. An *Accommodation Request Form* can help identify the inmate's limitations in direct relation to what specific barriers are then created in a program, service, or activity and what accommodations, including the inmate's barrier removal solutions, will allow them to perform the specified activity.

In order to determine if and how an effective accommodation should be provided, the facility, where **appropriate**, can review the inmate's medical records, arrange to have the inmate diagnosed by appropriate professionals, interview staff, including engaging security staff, and take other actions reasonably necessary. It should always engage in an **interactive process** which is an **informal, flexible conversation** with the inmate to help determine the most appropriate and effective accommodation.

Modification/Accommodation Orderly Process/Procedure

It is a best practice to set up this process as a logical straightforward consistent procedure.

1. Is the individual covered by the ADA?
2. What does the activity involve?
3. What specific disability symptoms/manifestations happen that affect the activity?
4. As a result, what are the particular barriers that are created?
5. What barrier removal (reasonable accommodation) suggested solutions can be implemented?
6. Periodic follow-up to ensure the accommodation effectiveness.

A promising practice may include a **partnership** with the inmate's case manager, the ADA/504 coordinator, and if appropriate, medical staff, to engage in the interactive process with the inmate to identify the necessary accommodations, as well as to perform ongoing monitoring to ensure the barrier removal solution remains effective. It may be necessary to consult with and/or bring in a knowledgeable **third party** to join the interactive process to find solutions. The best practice of having an extensive community and national network of resources and relationships can be highly beneficial in these situations.

Accommodations should be provided in **as prompt a manner** as possible and be monitored to ensure the barrier removal solution is and **remains effective**. Included should be procedures that allow easy access for staff to obtain for inmates accessible mitigating equipment and products widely ranging from effective communication devices and services (such as assistive listening devices and qualified sign language interpreters) to assistive technology (such as smart speech recognition, hand-free keyboard, and talking watches) to medically needed equipment and supplies (such as prosthetics and diabetic monitoring devices).

Procedures to allow staff to easily retrieve equipment to facilitate access for **visitors**, as appropriate, should also be in place.

Anticipating Need

Corrections has the duty to assess the need for disability related barrier removal even if the inmate has not requested an accommodation.

Pierce v. District of Columbia, 128 F.Supp.3d 250 (D.D.C. 2015)

A federal district court ruled that prison officials have a duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide accommodations that are necessary, whether or not the person has made a specific request for an accommodation and without relying solely on assumptions about that person's needs.

Visitors with Disabilities

Officials should develop policies and procedures that apply to members of the public who enter any department facility or participate in any department sponsored program, service, or activity as a visitor. This should contain directives and procedures on how to ensure a visitor's access through policy modification/accommodation, effective communication, or physical barrier removal. Clearly state the steps, which should be uncomplicated, a visitor must take to make a request and engage in the **interactive process** with the visitor to determine the most effective accommodation. These ADA notifications and procedures should be included in the formal visitation process a visitor must undergo that allows them to enter the facility.

TIP: Research and model other correctional facility ADA policy and procedures for inmates and visitors that accurately adheres to the law.

Organizations of Correctional Accreditation

It is vitally important to note that professional organizations of correctional accreditation such as the American Correctional Association and Commission on Accreditation for Corrections (ACA) and the National Commission on Correctional Health Care (NCCHC) do not necessarily ensure full compliance with the ADA, therefore be **diligent to ensure** ADA compliance as stated in the law and its regulations.

Limitation on State and Local Government Obligations

The correctional entity is not required to provide program access if it would result in a **fundamental alteration** in the nature of a program or undue financial and administrative burden. A fundamental alteration is a change that is so **significant** that it alters the essential nature of the facilities, services, privileges, or accommodations offered.

Weighing Civil Rights vs. Undue Burden

In some circumstances, the lack of disability access could result in significant detrimental harm to the inmate. An example of this is refusing to modify a policy that would allow the provision of a specialized mattress for an inmate with paralysis to help prevent skin pressure ulcers. Another example is an inmate who, due to deafness has limited reading abilities, is subjected to multiple

disciplinary actions because they are unaware of the standards for acceptable behavior due to being denied a qualified sign language interpreter (effective communication) in order to understand the information contained within the offender orientation handbook.

If an undue burden defense is being considered, the facility program administrator, and responsible clinician, should carefully determine the **detrimental harm** that would occur to an inmate if the particular accommodations are not granted.

According to USDOJ regulation, 28 C.F.R. § 35.150(a)(3), the **correctional institution carries the burden of proving** fundamental alteration or undue burden. This **decision** must be made by the **head** of the public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a **written** statement of the reasons for reaching that conclusion.

Undue burden defenses are subject to a very **high** standard of review and are rarely an effective defense; therefore the entity should have well documented all good faith efforts if the claim has to be made.

The institution **must then do what it can** up to the point of fundamental alteration or undue burden to create access.

Direct Threat and Security Rules

Security is the prime concern for facility officials. If it is objectively determined that a person with a disability is truly a direct threat that cannot be mitigated, then they may be excluded from participation in a service or program.

Direct Threat is defined as a significant risk to the health or safety of others that cannot be eliminated by:

- modification of policies, practices or procedures (including accommodations) or
- provision of auxiliary aids or services (effective communication).

The correctional institution can have legitimate safety requirements for both inmates and visitors based on actual risks and facts, which should be documented as to **why it is a risk** and **what facts make it a risk**. For example, if an accommodation is provided, and it is used as a weapon, the disabled inmate may have forfeited the right to that accommodation. However, this does not necessarily release the institution from creating **access by another means**.

ADA Requests and Solutions Can Be Unfamiliar in a Secure Setting

It is worthy to note that more recent court rulings and USDOJ settlements reveal that it is not a sufficient defense to offer a **simple claim** that providing an accommodation would be a direct threat and/or violates a safety policy. The correctional institution should be able to **fully justify** and

explain why the safety policy applied to the **particular** situation would not be as effective at addressing the risks associated with that circumstance. If the accommodation is refused on legitimate reasons then the obligation is to do **what can be done** to create access.

McBride v. Michigan Department of Corrections, 294 F.Supp.3d 695 (E.D. Mich. 2018)

Deaf and hard of hearing inmates challenged the lack of meaningful access to telecommunications devices that help them communicate effectively. The magistrate judge had found that MDOC's existing practices failed to provide them access equal to prisoners with hearing. MDOC failed to explain why the safety policies applied to telephone conversations would not be as effective at addressing risks associated with video transmissions. MDOC's existing system of using teletypewriters (TTY) was likened to "sending someone a fax to their homes versus an email to communicate."

Integrated Settings Priority

In accordance to fair treatment of inmates and the ADA, those with disabilities must be placed and housed in the most integrated setting appropriate to the needs of these individuals. Integrated settings allow people with disabilities to interact with people without disabilities to the fullest extent possible.

It is vital to establish facility correctional standards that include classification and placement procedures that generally place inmates with disabilities in facilities offering the **same programs and opportunities** as are afforded to prisoners without disabilities. Therefore, programs and services need to be accessible to inmates with disabilities who reside in the facility. Simply transferring an inmate to a facility that may be more architecturally accessible but has far less programs and services, including opportunities to earn sentence reduction credits, could be deemed to be discriminatory. This means there needs to be accessible housing in all security classifications and/or program levels of the facility.

Inmates with disabilities should have access to appropriately trained and qualified staff who are educated in the difficulties faced by inmates with various disabilities (i.e., physical, cognitive, and psychiatric). The difficulties could be due to the inmate's particular disability or due to inaccessible facilities, programs, or services.

Separate Programs

The correctional institution can have tailored programs and services available for inmates with disabilities. These programs may be needed in order to **facilitate program access** and integrated participation. However, it is prohibited to exclude inmates with disabilities from other programs just because special programs are available for inmates with disabilities.

Different or separate aids, benefits, or services to individuals with disabilities can also be offered **ONLY** if the programs must be separate to be effective and should be the **option of last resort**.

United States v. Nevada Department of Corrections, DJ # 204-46-176, (Settlement Agreement, February 21, 2021)

USDOJ concluded that Nevada discriminated against individuals with HIV through isolation and segregation. NDOC agreed to amend policies, practices and procedures to make sure inmates are not isolated or segregated solely due to their HIV status and to ensure confidentiality of inmates' health information. Inmates with HIV should not be excluded from employment opportunities and lower-level classifications, housing placements, services and activities. Staff should be trained on HIV and NDOC will revise their policies to take disciplinary action against inmates or staff who subject inmates with disabilities to discrimination, retaliation, coercion, intimidation, harassment, threats, or abuse, or who interfere with rights protected by the ADA.

Program Access

A facility, when viewed in its entirety, must be **readily accessible to and usable by** inmates and visitors with disabilities. Program accessibility may be achieved by a number of methods with integration priority. These methods include:

- policy modification/accommodation,
- effective communication (including an accessible website for visitors with disabilities), and
- architectural access.

Examples of Correctional Services, Programs, and Activities that Should Have Program Access:

- | | |
|---|--|
| • libraries | • visitation programs |
| • job / vocational training | • medical, dental, and mental health services |
| • boot camp | • anger management |
| • substance abuse programs | • academic and apprenticeship education |
| • phone calls | • commissary services |
| • housing and cell assignment | • personal hygiene care / accessible bathrooms |
| • dining hall | • recreational programs |
| • life skills classes | • parenting classes |
| • social services | • appropriate classification |
| • sexual offender treatment programs | • food availability during non-dining hours |
| • religious services | • services provided by means of kiosks and computers |
| • work release and early release programs | • discharge planning / re-entry |
| • confinement / segregation / restrictive housing | |
| • medical and mental health screening | |

Given that the correctional institution is responsible for all aspects of an inmate's life, program access is required 24 hours a day, seven days a week, not just during what would be considered regular business hours. For example, a Deaf detainee in a county jail at 2:00 a. m. is having chest pains and is trying to indicate this to the officer, effective communication must be afforded to this individual.

How Ableism Interferes with Program Access

Ableism is the discrimination of and social prejudice against people with disabilities based on the belief that typical abilities are superior resulting in societies and systems that are built and operate in favor of able-bodied people. To this day societies are simply not built for those who function physically or emotionally or cognitively differently from what society perceives as the vast majority of people. These groups of people are less able to function in society due to attitudinal, architectural, educational, communications, economic (employment), physical health and psychiatric health care barriers. The Justice system, including corrections, is not an exception to this discrimination. To address program access the system must identify the unconscious or conscious **failure** by that system **to take into account the spectrum of human needs and abilities as discriminatory.**

How Equity Creates Program Access

Equity policies and practices **account for the differences** in each individual's starting point when pursuing a goal or achievement and are designed to remove barriers to equal opportunity by providing support based on the unique needs of the individual. This involves determining what this means for people with disabilities leading to how access can be constructed. People with disabilities include persons who also face other types of marginalization. People of color, immigrants, LGBTQIA+people, and indigenous people of American Indians can face discrimination leading to and within the correctional system. Ideologies such as ableism, racism, sexism, xenophobia, homophobia, and transphobia often operate together and empower one another.

Perspective Leads to Equity and Program Access

Step away from being reactive by trying to constantly figure out and create equal access and opportunity within a complaint driven inaccessible system built on ableism that creates disadvantages and consequences for inmates and visitors with disabilities.

Instead work to create a **collective comprehensive responsive system** where it is usual business to create methods of doing things outside of nondisabled physical and neurotypical norms by taking into account the wide spectrum of human needs and abilities to create equal opportunity for all inmates and visitors.

Meaningful Access

[Andrews v. Rauner](#), 2018 WL 3748401 (C.D. Ill. Aug. 3, 2018)

An incarcerated woman with a number of mental health conditions regularly engaged in acts of self-harm. Medical professionals noted the importance of "out of cell time" for the inmate to engage in

activities like socializing and writing. However, after a 2015 suicide attempt, she was placed in solitary confinement. The inmate was stripped naked in a crisis cell instead of being transferred to an inpatient hospital for mental health care. While in segregation, she was asked questions about her mental health through the cell door and only received a psychiatrist visit for 30 minutes each week. The Illinois Department of Corrections argued that a plaintiff could not bring an ADA/504 claim for inadequate mental health treatment because “access to human interaction” was not a program, service or activity under ADA Title II and there was just disagreement with care provided. The court found for plaintiff and stated that her claim was about deprivation of access to services, programs and activities. The plaintiff was denied access to hospitalization outside of the prison while prisoners with physical disabilities or illnesses were sent to an outside hospital for treatment. The plaintiff was denied access to education, programming, recreation, exercise, and mental health treatment due to her disability and segregation-status so there was no need to decide if human interaction was a program, service, or activity under Title II.

See also [*Georgia Advocacy Office v. Jackson*](#), No. 1:16-cv-1634 (N.D. Ga. Apr. 10, 2019) which is a case regarding conditions in a county jail of the alleged practice of confining female inmates with psychiatric disabilities to isolation cells (called "mental health pods") for months at a time, as well as, the unsanitary conditions in those cells and not receiving jail-based competency restoration services thus violating the constitution, Title II of the ADA and Section 504 of the Rehabilitation Act.

Creative Program Access Solutions

Undoubtedly, some programs may call for highly creative access solutions for inmates with various disabilities, such as the following examples.

Early Release Programs

Participation in earned release programs such as conservation projects or wildland fire suppression, flood and other emergency responses, maintenance of public lands, and manual toiling of farms typically require specific eligibility qualifications. Inmates must earn the right to participate by their non-violent behavior and conformance to rules. They must also be physically fit, carefully screened and medically cleared.

Where inmates with various disabilities meet the behavioral criteria but may not meet the physical standards due to a disability, the facility should explore possible program expansion to include other components and responsibilities, such as administrative or sideline support work. Filling out reports and paperwork, coordinating team work, inventory of and sorting picked crops, food preparation and on-site meal services by these inmates could possibly be performed so that they are integrated in the program and have equal opportunity to earn early release credits.

If no alternative programs exist or a program can't be expanded where the inmate with a disability can have the same opportunity to equally earn early release credits on par with other inmates a policy modification could be made to refiguring credit time for the inmate with the disability.

For example, if an inmate, due to disability and program inaccessibility, is only able to perform 4 hours of work a day while the other able-body inmates are able to perform 8 hours a day of the same work, then consideration could be to give both the disabled inmate and non-disabled inmate the same number of credits. Each inmate is participating to the **fullest extent that they are able** given how the existing program is designed and implemented. Each inmate is meeting the end goal of the program which is an expected full out effort of participation by every inmate.

If a facility administers specific programs that, after extensive due consideration, cannot become accessible to an inmate with a disability, then as a last resort, the facility must ensure equal access and opportunity to the **same or similar benefits** by offering a substitute or separate accessible group or individually tailored program. It must be ensured that the inmate does not suffer adverse consequences such as loss of release credits, discipline or denial of parole.

Beckhorn v. New York State Department of Corrections, 2019 WL 234774 (W.D.N.Y. Jan. 16, 2019)

NYDOC has a program for inmates with histories of substance abuse which includes transfer to a work release facility. Plaintiff requested light-duty work, such as secretarial work, due to a shoulder injury for which he was also receiving workers compensation benefits. A counselor told him he should leave the work-release program and do a community service program instead. He did as he was advised, but then lost out on opportunity to earn good-time credit to reduce his sentence. At a hearing to evaluate eligibility for good-time credit, he was denied credit due to his restriction from participating in the work program due to disability. The chairperson of the hearing stated they couldn't take a risk with him because even if he got a job doing secretarial work, he could fall out of his chair. Plaintiff sued under the ADA/504 and the court granted a preliminary injunction ordering immediate reinstatement of revoked merit time and a parole hearing.

United States v. Hawaii Department of Public Security, DJ # 204-21-88 (Settlement Agreement, March 13, 2019)

Inmates alleged that HDPS excluded inmates with mobility disabilities from participating in its furlough program because of their disabilities, thereby delaying their parole and extending the terms of their imprisonment. The terms of the settlement included that all qualified inmates with mobility disabilities will be permitted to participate in all furlough programs. HDPS will ensure that inmates with mobility disabilities are given a range of work furlough programming from sedentary tasks to manual labor with the requirement that HDPS conduct an individualized assessment to determine whether there are reasonable accommodations/modifications that would permit the inmate to participate in work furlough if an inmate encounters barriers to participation because of a mobility disability. HDPS will provide reasonable accommodations necessary to ensure that the inmate can participate. To learn more go to www.ada.gov/hawaii_dps_sa.html.

Discharge / Re-Entry

Parole is considered a program, service or activity of corrections. As with incarceration, parole services and activities must be made accessible to parolees with disabilities. Also, the lack of either discharge planning or development of a concrete, viable release plan by the inmate due to disability can disproportionately impact these inmates. The correctional facility should **ensure meaningful** discharge planning in these cases. Part of meaningful access could include allowing the inmate to take their disability related mitigating measures provided by the facility, such as their hearing aids or wheelchair, with them upon release so they are able to better function as they reintegrate into the community.

The ADA/504 coordinator and other correctional staff established relationships with the disability related community and organizations, which have the relevant and crucial knowledge, experience, and connections to aid in creating meaningful discharge planning and services, can come into play in assuring successful community integration. Discharging an inmate with significant disabilities, who needs personal service attendants and accessible housing, into an institution, such as a nursing home, can be in direct violation of the U.S. Supreme Court's decision in [Olmstead v. L.C.](#), 527 U.S. 581 (1999): It is a violation of the ADA for states to discriminate against people with disabilities by providing services in institutions when the individual could be served more appropriately in an integrated community-based setting. Therefore sending an inmate from the correctional institution into another institutional setting could be an ADA violation. If a disabled inmate will be in need of intense services upon re-entry, it may be necessary to begin the discharge planning process months in advance prior to the release date.

[U.S. v. Los Angeles County](#), 2016 WL 2885855 (C.D. Cal. May 17, 2016)

The U.S. reached a settlement agreement with LA County over violations of CRIPA and the Violent Crime Control and Law Enforcement Act. Individuals intervened to challenge the settlement saying portions about discharge planning violate the ADA and argued that without meaningful discharge planning, inmates were denied access to public benefits, including transportation, shelter, medical care, psychiatric care, and other services. The County argued that no discrimination occurred because all inmates are treated equally. The intervenors argued the agreement conflicts with the ADA's requirement that public entities are to "administer services, programs, and activities in the most integrated setting appropriate." The court denied the defendant's motion for a judgment against the intervenors, emphasizing the lack of planning disproportionately impacts disabled inmates who have intense need for assistance and the importance of meaningful re-entry programs. The court referenced the cycle of homelessness and recidivism where some individuals have been arrested "hundreds of times" and that "inmates with mental illness are often "released onto the streets...in a more vulnerable, less stable state than when they entered the jail...many ex-inmates with mental illness will end up back in prison if released without proper access to services.

[Crowell v. Massachusetts Parole Board](#), 74 N.E.3d 618 (Mass. 2017)

This case involves a plaintiff who has a traumatic brain injury (TBI) who brought a lawsuit after he was denied parole because he did not present any concrete, viable release plan. The claim was that he was denied fair hearing and parole review decision. The lower court dismissed the case and the Massachusetts Supreme Court vacated dismissal on other grounds that the Board's decision was not adequately considered per the ADA and that deference for parole decisions is not without limits and cannot categorically exclude any prisoner by reason of disability. The Board had a responsibility to assess potential reasonable modifications, like helping with a release plan.

Access to Digital Information

Ensuring access to digital information and materials for both disabled inmates and visitors is just as important as other kinds of access. Digital access (computers, tablets, touchpads, kiosks, and websites) can be an inaccessible issue for people with all types of disabilities including vision, learning, hearing, and other physical impairments. Access can be created by a wide variety of assistive technology. Examples are:

- **Screen magnification software:** users can control the size of text and graphics on the screen and have the ability to see the enlarged text in relation to the rest of the screen.
- **Screen readers:** users can read the text on the computer screen with a speech synthesizer or braille display and can instruct the synthesizer to read or spell a word, read a line or full screen of text, find a string of text on the screen, announce the location of the computer's cursor or focused item, etc.
- **Text readers:** users can read text with a synthesized voice and may have a highlighter to emphasize the word being spoken.
- **Speech input software:** users have an alternate way to type text and also control the computer.
- **Alternative input devices:** some users may not be able to use a mouse or keyboard to operate an electronic device/screen. Various forms of devices can be used, such as single switch entry devices (can be used with other alternative input devices and are typically used with on-screen keyboards), head pointers and eye tracking software.

Services Provided by Means of Kiosks and Computers

Kiosks and computers can provide access to a host of information for inmates and may also be utilized by visitors to the facility. Information such as learning courses, job vacancies, health, rehabilitation, legal, printing forms, filing grievances, making medical appointments, scheduling laundry, and video visits can be accessed.

Considerations When Making Kiosks Accessible

Kiosks should be operable for individuals who have low vision or blindness, little or no color perception, limited or no hearing, limited manual dexterity, limited reach and strength, a prosthetic device, limited or no speech, or limited cognitive skills. Kiosks should also be operable without time dependent controls.

Computers, keyboards, and kiosks should (but not limited to):

- be equipped with accessibility features/software (such as screen reading software),
- be located in areas that provide ease of access for wheelchair users and others with mobility disabilities,
- have video captioning, and
- follow “Symbols” from the Department of Justice’s 2010 Standards (707.6.3.2) if there are function keys.

Policy modification that allows for inmate or visitors with disabilities that need increased time allotment to complete a task should be given.

Correctional facilities first and foremost must make sure that when they **upgrade or acquire new kiosks, that the latest accessible features are incorporated** including, but not limited to, the following:

- physical structure of the kiosk, such as the height and angle of the screen and keyboard,
- an assistive keyboard,
- audio and headphone outputs,
- screen interface including size and color of text and buttons on screen, clear identification of form inputs, easily understood language, and the provision of audio alternatives for all information or functionality conveyed by images or text, and
- produce a text-to-speech capability with Braille instructions to turn on speech output.

Contact the U.S. Access Board for more information and guidance at (800) 872.2253 (voice) or (800) 993.2822 (TTY) and go to www.access-board.gov.

Prison Rape Elimination Act (PREA) Reporting

Corrections must provide multiple internal ways (and at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency) for inmates to **privately/anonymously report** sexual abuse and sexual harassment, report retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. The internal and external reporting avenues must be fully accessible to inmates with various disabilities. Third party reporting must be made accessible to these third parties who may have a variety of disabilities. The reporting systems should be set up in ways that are as accessible as possible so that the inmate or third party can make the report privately or anonymously without having to necessarily request an accommodation to do so. If an individual needs a specific tailored accommodation to create access, then the procedure must set up this accommodation in a way that complies with the PREA.

Architectural and Transportation Access

Architectural Access

Not all cells and facilities or common areas must be physically accessible, and structural changes need not be implemented where other methods are effective for inmates with mobility disabilities. However, in most cases, the only way to ensure full integration and equal access to programs and services is to remove physical barriers such as enlarging a doorway or building a ramp to make a recreational area accessible. Minor accommodations such as adding a cup dispenser to an inaccessible water fountain could be considered. Additionally, remove communication barriers such as installing flashing fire alarms for those who cannot hear. Other spaces and elements such as parking lots, entrances, check in counters, waiting rooms, visitation areas, interview rooms, housing/cells, classrooms, infirmary, program areas, recreation areas, dining, toilets, and showers should be assessed for accessibility. The 2010 ADA Standards for Accessible Design provide comprehensive requirements for correctional facilities, e.g., Sections 232 and 807. All physical access changes should be included in the facility's **ADA updated/ongoing evaluation and transition plans**, including conducting an architectural audit, which is essential to understanding whether a facility is ADA compliant.

New Construction and Renovations

Corrections facilities should be in compliance with the USDOJ's [2010 ADA Standards for Accessible Design](#) if new construction and renovations were done starting March 15, 2012. New construction and alterations from 1992 to 2012 should be in compliance with the USDOJ's [1991 ADA Standards for Accessible Design](#). The [Architectural Barriers Act](#) can come into play when buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968.

For More Extensive Information and Training

The ADA National Network and U.S. Access Board's [Accessible Detention and Correctional Facilities](#) archived training provides an excellent overview of the ADA and Architectural Barriers Act (ABA) accessibility requirements for detention and correctional facilities and reviews both scoping and technical provisions addressing holding cells and housing cells with mobility and communication features, visiting areas, and medical care facilities. This session also highlights applicable provisions for these facilities along with some additional requirements established by the USDOJ.

[ADA/Section 504 Design Guide: Accessible Cells in Correctional Facilities](#) is a technical assistance guide by the USDOJ on designing accessible cells for inmates with mobility disabilities.

[Furgess v. Pennsylvania Department of Corrections](#), 933 F.3d 285 (3rd Cir. 2019)

An inmate with myasthenia gravis lost access to an accessible shower when he was moved to restrictive housing due to alleged misconduct. The facility did not provide this access despite repeated requests by the inmate. After three months the inmate was allowed to bathe in an inaccessible shower stall where he became unconscious when he fell due to the lack of grab bars. The correctional facility argued the inmate's misconduct, which put him in confinement housing, was the reason for losing access to an accessible shower because there were no such showers in this unit. The court rejected this argument stating that "A prisoner's misconduct does not strip him of his right to reasonable accommodations." The prison knew of his disability-related needs and failed to provide him with program access which constituted deliberate indifference.

See also [Shaw v. Kemper](#), 52 F.4th 331 (7th Cir. 2022) where the correction facility did not ensure reasonable and consistent access to an accessible toilet for an incontinent inmate, who three times during one year, could not use the accessible bathroom due to being occupied by nondisabled inmates, resulting in defecating on himself all three times.

[Clemons v. Dart](#), 168 F.Supp.3d 1060 (N.D. Ill. 2016)

Correctional facilities have occasionally tried to avoid providing accessible facilities by offering inmates assistance with navigating physical barriers. Rather than assigning an inmate who used a wheelchair to one of the accessible rooms, the Cook County Sheriff provided him with an inaccessible room but promised that nurses were always on call to help him access the sink, shower, and toilet in his room. In *Clemons v. Dart*, a federal district court rejected that arrangement, reasoning that the purpose of the ADA, even in the jail context, is to promote the ability of individuals with disabilities to engage in "independent living." The court ruled that requiring him to rely on nursing assistance rather than providing him the means to address his own basic needs was not "equivalent access" and that "Title II requires affirmative, proactive accommodations necessary to ensure meaningful access to public services and programs, not accommodation upon request."

[Pierce v. County of Orange](#), 905 F. Supp. 2d 1017 (C.D. Cal. 2012)

This case was filed in 2001 and closed in 2014 with \$2.99 million in attorneys' fees and over \$225,000 in litigation expenses. Pretrial detainees initiated a class action suit under the United States District Court for the Central District of California. Among other charges they asserted that they were denied reasonable accommodations under the ADA. The court found ADA violations including physical barriers for disabled inmates, disparate access to services, recreation and programming, and noncompliant bathroom, shower, and living facilities. Over the long course of the case the court accepted Orange County's final proposed plan for addressing the physical barriers identified and ensuring that disabled detainees are provided with equal access to programs, services, and activities. The Court's order also called for the appointment of a Monitor.

See also [*United States v. San Luis Obispo County Jail*](#), # DJ 204-12C-506, USAO NO. 2018V01548 (Settlement Agreement, June 24, 2021) agreement with the jail to make architectural changes.

Transportation Access

Standard transport practices can be dangerous for inmates with mobility disabilities. These inmates are at a high risk of unintentional injury when being transferred and seated in a vehicle that is not accessible to them. Individuals with mobility disabilities are usually unable to keep themselves securely seated without the proper space and restraints. Also, mobility equipment can sustain damage if it is not properly stored or secured in the vehicle. Safe transport for inmates who use manual or power wheelchairs might require the correctional facility to make minor modifications to existing cars or vans, or to use lift-equipped vans or buses. Some individuals who use assistive devices like crutches, braces, or even manual wheelchairs might be safely transported in vehicles other than a lift equipped van, but this must be determined on a **case-by-case basis**. Facility staff should be trained on all the components of accessible transportation, including how to use lift equipment, properly transferring and securing the inmate in the vehicle, and properly securing mobility equipment. Inmates should **not be prohibited** from participating in offsite programs and services because of inaccessible transportation, therefore the institution will need to find appropriate solutions that will provide accessible transportation.

Contact your regional ADA Center (www.adata.org) to learn of guidance resources involving accessible and safe transportation procedures.

Policy Modification / Accommodation

The correctional institution **must make reasonable** modifications in policies, practices, rules, and procedures (which can include accommodations) when necessary to avoid disability discrimination in its provision of goods and services to a person with a disability, unless the modification would **fundamentally alter** the nature of the goods and services provided. Policies should ensure **provisions for alternative means** to create equal access and opportunity for individuals with disabilities.

As previously stated, the **common terminology** within the correctional system is “**accommodation**” rather than the use of the ADA Title II term “modification of policy”, thus this guide uses these terms interchangeably.

To decide what is a “reasonable accommodation,” courts have weighed the needs of inmates with disabilities rights against the structural, financial, and administrative concerns of the facility.

In particular, courts examine:

- Whether the modification/accommodation will fundamentally alter a program or activity.
- If making modifications/accommodation that would result in undue financial and administrative burdens.

Courts also examine penological concerns such as safety. The urgency of the need and safety considerations play significant roles in determining whether an accommodation is reasonable. Correctional facilities do not have to make modifications that would interfere with their ability to respond to a safety threat, as these modifications would not be reasonable.

However, as previously noted, it is not a sufficient defense to offer a **simple claim** that providing an accommodation would be a violation of a safety policy. The correctional institution must be able to fully **justify** and **explain** why the safety policy applied to the **particular** situation in question could not be as effective at addressing the risks associated with that circumstance. The previous example mentioned is if there is a prohibition of videophones due to the claim that their use would be a safety violation, then the facility must successfully explain why the safety policies applied to telephone conversation would not be as effective at addressing the risk associated with video transmission (see [*McBride v. Michigan Department of Corrections*](#), 294 F.Supp.3d 695 (E.D. Mich. 2018)).

Fundamental Alteration

The facility must consider the individual inmate or visitor (case-by case basis) in terms of what it means regarding safety, fundamental alteration, and the achievement of disability related barrier removal. The fundamental alteration **analysis** with each **inmate or visitor** could entail:

- questioning the purpose of the policy/rule,
- examining what can happen if the policy/rule is modified or suspended,
- assessing of the legitimate safety risk regarding the inmate or visitor requesting the accommodation including the effect toward others,
- considering the impact on other policies/rules, and
- accounting for the ability to respond to legitimate safety threats.

[*Reaves v. Department of Corrections*](#), 195 F.Supp.3d 383 (D. Mass. 2016)

A man with quadriplegia, who was unable to sit in a wheelchair, challenged various aspects of his incarceration. Prison officials had refused to transport him with a gurney or modify the prison’s schedule and activities to allow him to safely go outside or socialize with his peers — procedures that had prevented him from showering, going outdoors, or socializing with peers for over sixteen years. The court found that not only was he being treated differently from his peers; he was being denied access to experiences that are “fundamental to what it means to be human.”

Determining Reasonable Policy Modification for Visitors

First consider why the rule exists and what can happen if the rule is modified or suspended. If a direct threat or fundamental alteration can be justifiably defended the entity **must then do what they can** to the greatest extent possible to create access.

Discipline and Modification of Policy

It is recognized that discipline is necessary to properly operate a correctional facility and that an impairment does not necessarily exempt an inmate from following rules. Depending on the inmate's disability, it is vital to understand that certain discipline policies and techniques may only result in worsening an inmate's behavior and deteriorating their mental and emotional health instead of achieving the discipline goal of changing behavior to rule conformance. Punishment of disability or its expression should be prohibited. For example, the facility should not discipline or disadvantage an inmate with an intellectual disability who is slow to respond to an order to move more quickly nor an inmate who is blind because they could not see a visual instruction.

In facilitating compliance with the modification of policy obligation, it would be a best practice to create and implement policies that **cultivate** staff to:

- seek assistance from facility-based and other crisis intervention teams and mental health professionals,
- learn and utilize de-escalation techniques,
- forego discipline and provide treatment where it is apparent that an inmate's negative or disruptive behavior is related to their disability, and
- implement policies that no longer permit discipline for self-injurious behavior due to disability.

Disability consideration should always be included in the contentious decisions of **solitary confinement** for disciplinary, administrative, medical, or prisoner protection reasons (see [Andrews v. Rauner](#), 2018 WL 3748401 (C.D. Ill. Aug. 6, 2018)). It is estimable to know that states, such as New Mexico and Colorado, have laws that restricts the use of solitary confinement for juveniles, pregnant women, and prisoners with psychiatric conditions.

For further ADA compliance solutions and reforms regarding inmates with serious psychiatric and intellectual disabilities regarding solitary confinement see the **USDOJ investigation** into the [Pennsylvania Department of Corrections' Use of Solitary Confinement](#).

Other Types of Discipline Issue Examples

Staff should consider disability related barriers when issuing disciplinary/incident reports such as:

- "failure to report" - consider if the inmate who has mobility disabilities was given ample time to arrive at a location,
- "disobeying a direct order" - consider if the hard of hearing inmate was given effective communication of the order,

- “insolence” - consider if the Deaf inmate uses broad hand and arm movements in expressing nonverbal communication, and
- “unauthorized property” - consider if the inmate has a magnifying device that could have been approved for disability mitigation.

Accommodation Examples for Inmates

- Participation in boot camp by an inmate who has a history of hypertension or has a prosthetic leg, with accommodations if needed, that would make the inmate eligible for early parole release.
- Allowing the use of the Relay service for Deaf and hard of hearing inmates to talk with their lawyer.
- Exception to the rule forbidding inmates from storing food in their cells, so that an inmate who has diabetes can keep their blood sugar stable.
- Allow an inmate with a psychiatric condition to have or work one consistent schedule.
- Allowing inmates who take psychiatric medication to participate in drug treatment programs and other activities, such as work release programs, that are required or help inmates to be eligible for parole.
- Modify policies and procedures to require that inmates with mental health or developmental disabilities be evaluated by appropriate professionals to consider mitigated sanctions, if these inmates are subject to serious misconduct sanctions, and to resolve allegations of non-violent offenses informally.
- Providing extended time and breaks for inmates with learning disabilities, TBI, and psychiatric conditions in GED courses, practice tests and exams.
- Provision of free bold-lined paper and 20/20 low vision pens (makes the letters clean and clear on the paper) in common areas and for in-cell use for inmates with low vision.
- AA 12-step support group to meet in an accessible location at the facility.
- Ensure that an inmate with epilepsy is assigned the bottom bunk bed in case of a seizure.
- Provide a movement pass that allows an inmate with diabetes or inflammatory bowel disease an early fixed mealtime.
- Allow more time for movement or eating a meal when a disability does not allow it to be done in the typical time.

Opioid Use Disorder

Given the U.S. is in the midst of an unprecedented opioid epidemic¹⁵ a Bureau of Justice Statistics 2020 Special Report asserts that there is a high prevalence of Opioid Use Disorder (OUD) among people in prisons, jails, and detention centers.¹⁶ Correctional facilities have critical roles in **ensuring appropriate treatment** for inmates with this chronic illness and that the most effective method of treatment for an OUD is medication-assisted treatment (MAT). A MAT treatment

program combines the use of one of three FDA-approved medications of methadone, buprenorphine and naltrexone with counseling and cognitive behavioral therapy.

It is worthy to note that the USDOJ is currently pursuing **settlements** with correction departments that require that **all three** Medications for OUD must be available and decisions on which to use must be driven by the inmate's particular needs.

[Smith v. Aroostook County](#), 376 F. Supp. 3d 146 (D. Me.), aff'd, 922 F.3d 41 (1st Cir. 2019)

The court held that it likely violates the ADA to deny an incarcerated person access to medication for opioid use disorder (MOUD) without a particular assessment of the individual's need for medication. This decision granting the plaintiff's motion for preliminary injunction came after the plaintiff was going to be incarcerated in the county jail and requested access to her prescribed MOUD. The court did not find persuasive the defendant's concerns about safety and diversion. The case was affirmed by the First Circuit.

See also [Pesce v. Coppinger](#), 355 F.Supp.3d 35 (D. Mass. 2018) where the correctional policy refusing to permit methadone use for individuals with opioid use disorder likely violated the ADA.

Note that when a facility refuses to allow MAT participants to participate in programs, services, or activities because it believes that MAT makes patients stupefied or otherwise inhibits their performance, the entity could be **improperly regarding the treatment itself as a disability** (See 42 U.S.C. §12102(1)(C) (defining "being regarded as having" a disability as a disability under the ADA)).

Correctional Education Programs

Given that inmate populations are over-represented with individuals having below average levels of educational attainment,¹⁷ correctional education is a fundamental component of rehabilitative programming. The wide variety of correctional education providers offer various programs that can contribute to re-entry success and consequentially should be **fully accessible** through accommodations, when needed, to inmates with various disabilities.

[United States v. Minnesota Department of Corrections](#), Civil Action No. 0:23-cv-00367-JWB-ECW, (D. Minn. Proposed Consent Decree, February 14, 2023)

USDOJ found that the Minnesota Department of Corrections (MNDOC) discriminated against inmates with disabilities in its GED programs by denying individuals with disabilities opportunities to apply for or receive needed modifications on the GED exam, courses or practice tests, such as extended time and frequent breaks. The USDOJ complaint alleged that without reasonable modifications, many inmates with disabilities repeatedly failed their practice tests or official exams, were denied access to other prison programs, and were released from incarceration without a GED. MNDOC agreed to revise its policies and procedures, train relevant personnel and educate incarcerated individuals on these revised policies and the ADA, hire an agency-wide ADA Compliance Officer and designate facility-level ADA and education coordinators, conduct a

corrective action review to determine appropriate relief for current inmates with disabilities and provide regular reports to the department. MNDOC will also pay over \$70,000 to compensate the aggrieved inmates.

Visitors and Accommodations

Visitors with disabilities should be made fully aware, as they go through the formal visitation process, that they have a right to request accommodations, if needed, to create visitation access, **even if it affects visitation rules**. How a visitor requests and receives a modification should be **easily understood** and not be a burden to complete. This process should be widely and clearly publicized throughout the visitation process.

A visitor's need for the policy modification, such as a request to bring in food in order to maintain stable blood sugar due to diabetes, may cause concern because this could be an opportunity for contraband to enter the facility. In these cases, the visitor may need to make prearrangements with the facility and possibly produce a letter, from an appropriate professional, indicating their need to do so. As with all visitors, the facility may conduct an examination of the visitor's food. Alternative modifications could be that the facility provides the food that is specified by the visitor or that the visitor is allowed to purchase commissary items.

Once an accommodation has been made for a disabled visitor the facility should have a **process where all staff that interact with visitors** should be informed to ensure adherence to the accommodation. There also should be a confidential record of the accommodation so the visitor does not have to make a re-request for every visit.

Accommodation Examples for Visitors

- Allowing visitation in an accessible area for the visitor who is a wheelchair user if the designated visitation area is inaccessible.
- Alternate search methods if a wheelchair cannot fit through metal detector or visitor cannot go through the metal detector due to medical devices.
- Assisting a visitor with cognitive disabilities in making a request for a needed accommodation.
- Allowing a visitor with anxiety disorder to visit the inmate in a quiet area.
- Allowing an ADA defined service animal to accompany its handler/visitor.
- Allowing a visitor to wear sunglasses due to low vision with extreme light sensitivity or allowing the visitor to visit in a low light area.
- Allowing a visitor, who cannot wear shoes due to having swollen feet from congestive heart failure to enter the visitation area without shoes.
- Permitting a visitor who uses a portable oxygen tank to visit.

Disability Related Mobile Applications

It is now a **common reality** that there are numerous disability related mobile apps that create vital access and even lifesaving mitigation measures for people with vision, hearing, physical, or intellectual disabilities. In order to create access for visitors who depend on these apps the correctional facility should acknowledge this access modernization and create ADA compliant policies recognizing how to treat and monitor apps that connect to the internet or work independently without a connection. The policy and procedure should include the obligation to determine allowance of the app on an individual **case-by-case basis**. If, due to legitimate and defensible safety or fundamental alteration reasons, the visitor is prevented from having their app during in-person visitation, then the facility must do what they can to facilitate visitation equal opportunity, such as setting up video visits.

Refusal of an Accommodation

An accommodation can be refused by an individual even if it is **effective** to remove disability related barriers. However, in doing so, the individual may not be able to access the program or service. A best practice is engaging in the interactive process to understand what could be **legitimate** personal reasons for the refusal, which could lead to other possible effective accommodation options or working through the concerns the inmate or visitor may have regarding a particular accommodation.

It is worthy to note that if an inmate is provided an accommodation, such as hearing aids or a wheelchair, and the inmate **does not constantly** or even **consistently** use the accommodation, this does not necessarily mean that the accommodation is not needed. The use of the accommodation should be based on the inmate's discernment regarding their specific circumstances and situations.

Effective Communication

The correctional facility must provide **inmates** with communication related disabilities an effective means, through auxiliary aids and services, to receive and understand information and to be able to communicate with others in any and all relevant aspects of facility living.

The facility must also provide disabled **visitors** auxiliary aids or services, when needed, so they can participate in all visitor services and programs.

Inmates or visitors who may need effective communication could include people who are Deaf, deaf-blind, hard of hearing, blind or have low vision, have speech related disabilities, or cognitive and intellectual disabilities.

Effective communication means that communication must be as clear and understandable to people with disabilities as it is for people who do not have disabilities and that the information is clearly

understood by both parties. The standard for achieving effective communication is on the **outcome of the communication**.

Effective communication requirements extend to all communication by staff, contractors, and any others who have interaction with **inmates** as well as **visitors**. It extends to not just formal or chiefly important communication, but to **all communication** that is routine and non-routine, formal or informal, oral, written, or video.

Effective communication can be achieved through the use of auxiliary aids and services. When selecting an auxiliary aid or service, the correctional institution must give **primary consideration** to the aid or service **preferred by the individual**. Usually that individual is best able to identify the communication barriers that hamper participation. However, the public entity can provide a different aid or service if that aid or service is an **effective** means of communication.

For example, a Deaf individual who has limited reading skills due to deafness, passing notes back and forth during a medical exam will not be effective. A qualified sign language interpreter will be needed to ensure the inmate can fully participate in their own exam.

The correctional facility should be equipped with a wide-range of auxiliary aids and services which can include:

- qualified sign language interpreters and readers,
- video remote interpreting (VRI),
- accessible web sites,
- alternate formats (large print format, flash drive, Braille or tactile displays),
- screen magnification,
- handheld reading scanners,
- audio recording,
- assistive listening systems,
- screen reader software,
- electronic reading/writing pads,
- note takers,
- written materials,
- telephone handset amplifiers,
- captioned telephones,
- speech input software,
- telephones compatible with hearing aids,
- videophones,
- text telephones (TTYs) and relay services,
- captioning of audiovisual materials,

- real-time transcription (CART),
- talking, vibrating, and Braille watches,
- non-auditory alarms/alerts pagers,
- speech generating devices, and
- other accessible voice, text, and video-based telecommunications products and systems.

Inmates should **be trained** on how to use the various technologies, as needed.

Effective Communication Procedures

Correctional institutions must provide auxiliary aids/services and accessible formats in a **timely** manner, and in a way that protects the privacy and independence of the individual.

A straightforward **procedure** should be in place stating how an inmate and visitor **can indicate a need** for and request an auxiliary aid or service. If needed for an inmate, a basic form of an evaluation should be directly done. An initial **communication accommodation plan** should be created to ensure that the inmate is afforded effective communication to equally access all services, programs, and activities. Importantly, the plan should include the **appropriate steps to ensure** that all staff having contact with that inmate are **made aware** of the plan, including any necessary assistive devices, auxiliary aids and services, and other reasonable modifications/accommodations.

Regarding the provision of auxiliary aids and services for **visitors**, the facility can require the individual to give **reasonable** notification in advance if the facility needs to secure the particular aid or service, such as obtaining a qualified sign language interpreter. This procedure should be clearly stated in the visitation process, including on the facility's website. In order to ensure timely response to requests, such as a qualified interpreter, the institution should have standing contracts with suitable vendors.

The decision of what type of auxiliary aid or service that will be effective will vary in accordance with the following analysis:

- What is the method of communication used by the individual?
- What is the nature, length, and complexity of communication involved?
- What is the context in which communication is taking place?

Inmate Orientation

Auxiliary aids and services should be provided during orientation. This ensures that an incoming inmate with a communication related disability can **learn and understand** facility rules and sanctions, mail and visiting procedures, grievance procedures, eligibility requirements for programs, how to participate in services, how to access medical and mental health care, terms of release, how to request an accommodation, etc. Signed acknowledgement of receipt of initial orientation and inmate handbook should only occur after the inmate has been afforded effective communication as it relates to their disability.

Normal Routine

Providing effective communication through auxiliary aids and services should be a **normal part** of activities, services and programs (such as classification meetings, transfers, medical care, education, anger management, and obtaining reintegration tools) and activities (such as sports, recreational, spiritual and work). Effective communication is **paramount** in an inmate's discipline due process, including in disciplinary hearings. Benefits such as learning of and understanding resources upon release are also critical. Effective communication should also be ensured when **requesting** and **addressing** disability related accommodations or filing and going through the ADA and other **grievance** processes.

Courts have particularly identified the vital importance of assuring effective communication for high stakes interactions for disabled inmates including:

- medical care related appointments, including dental, vision, audiological, mental health care and other care appointments,
- individual therapy and group counseling sessions,
- disciplinary investigations and disciplinary hearings,
- educational and vocational programs,
- transfer and classification meetings,
- the interactive process with the ADA/504 coordinator and other staff,
- the development of an access plan,
- religious services,
- early release programs, and parole/re-entry programs.

If the institution has extensive telephone contact with the public it is important to be familiar with the **Relay Service** (see Resource section) and up-to-date assistive communication technology such as videophones.

Effective Communication Examples for Inmates

- Providing inmates with vision impairments access to tape players and books on tape, large print format, Braille reading materials (available free through the Library of Congress), or providing an electronic tablet with accessible features, in order to fully participate in various programs.
- Provide a video of a qualified interpreter interpreting all intake and orientation materials for Deaf inmates and same materials provided in large print format (at least size 18 font) or electronic format with available assistive technology for inmates who are blind or have low vision.
- Orientation and mobility instruction by certified specialists for inmates who are blind or have low vision to new situations and environments, including efforts to preserve features of their prior living situation and substantial general training for the newly blind or severely low vision inmates.

- Providing Deaf inmates qualified sign language interpreters for classification interviews, medical appointments, required classes, and treatment programs.
- Divide assignments into smaller tasks and goals for inmates with cognitive disabilities.
- Read and explain, where and when needed, the inmate handbook and written orientation materials to an inmate with an intellectual disability.
- Always use captioned videos.
- Provide an assistive listening system device to an inmate who wears hearing aids, so they can listen to and follow instructions or take part in a therapeutic activity.
- Modifying policies that limit the length of Relay calls because the call may work in a way that takes longer than average phone calls.
- Providing videophones, which is a telephone device transmitting and receiving a visual image as well as sound, for inmates whose primary language is American Sign Language.
- Talking to an inmate with a brain injury in a quiet, distraction-free setting to relay instructions accompanied by written information in bullet form.
- Read aloud what is written on the board and keep instructions brief and uncomplicated for inmates with learning/reading disabilities.
- Providing a qualified sign language interpreter during a Deaf inmate's medical screening and appointments.
- Allow time for clarification of directions and essential information for inmates with various cognitive related disabilities.
- Try to find different ways of saying the same thing for inmates with intellectual disabilities and ask them to repeat the specifics.
- Provide an alert pager system for Deaf and hearing-impaired inmates about events such as medical appointments, count, meals, yard, and when it is time to wake up.
- Providing digital scrolling system messaging that informs individuals who are Deaf and hard of hearing of important information.
- Use flashing lights, note card or other methods of communication to notify inmates who are deaf or have low hearing about events and activities.

Effective Communication Examples for Visitors

- Corrections staff is familiar with and uses the Relay Service.
- Providing a quiet place of visitation so a hard of hearing visitor is able to communicate with an inmate.
- Providing an amplification device for use of the visitation booth telephones that allows physical proximity and relative quiet.
- Providing the visitation rules in alternative formats such as large print format (at least size 18 font).
- Providing a staff person to help fill out a form for a visitor with an intellectual disability.

- Facility website is accessible to the public who are blind, have low vision, are hard of hearing, or Deaf.
- Allowing the use of mobile apps that create access for the visitor, such as a hearing aid application.

Disability related **mobile applications** are now numerous and widely available, including apps that mitigate communication. As previously stated, create ADA compliant policies recognizing how to treat and monitor these apps in order to afford equal opportunity.

Court rulings have required facilities to make accommodations for Deaf or hard of hearing visitors who are seeking to communicate with inmates.

Qualified Sign Language Interpreters

Corrections institutions must provide for disabled inmates and visitors auxiliary aids or services, including **ASL** (American Sign Language) interpreters and possibly qualified interpreters who can sign in other languages, if spoken non-English language interpreters are provided for inmates or visitors who are not fluent in English.

An ADA qualified interpreter is defined as **accurate, effective, expressive, and impartial**, and **able to use necessary specialized vocabulary**.

A **certified** sign language interpreter is **not necessarily a qualified interpreter**. For example, a Deaf inmate is provided a certified sign language interpreter, but the inmate is having difficulty in understanding the interpreter's particular linguistics and dialect or the interpreter is not familiar with the specialized vocabulary involved, therefore this interpreter is not providing effective communication and is not a qualified interpreter for this individual. Another certified interpreter who is able to effectively sign with this inmate should be used.

The facility **cannot require** that the visitor bring their own interpreter. The only limited **exceptions** to this rule are the following three circumstances:

- Where there is a specific request by a person with a disability to use a friend, family member, or other person to interpret, and this accompanying adult **voluntarily** agrees to do this, and reliance on that person is appropriate under the circumstances.
 - Determining appropriateness can include the need for accuracy, effectiveness, and impartiality.
- In **emergency situations** where there is imminent threat to the safety or welfare of the individual or public and no interpreter is available, a friend, family member or other person can be used as an interpreter.

- Use of children as interpreters is **only permissible** in emergencies involving imminent threat to the safety or welfare of the individual or the public where there is no interpreter available.
 - This is the only exception; therefore do not use a child as an interpreter for any other circumstances, even if the communication with the Deaf individual is simple and straightforward. Keep in mind that a child is defined as someone who is under 18 years of age.

Qualified Reader

People who are blind, have vision loss, or are deaf-blind may need a qualified reader, especially for high stakes communications, who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary. A reader is someone who can read out loud from hardcopy material, computer screen, etc. A reader does not interpret the information.

Financial Responsibility

The institution assumes full financial responsibility for auxiliary aids or services such as qualified sign language interpreters or alternative formats whether it is for an inmate or a visitor. For example, a Deaf individual who needs a qualified interpreter or an inmate with a cognitive disability needs a pen and paper to communicate more effectively cannot be charged for the associated costs.

Admittedly, correctional institutions may be concerned with the possible costs associated with providing effective communication for inmates. In **weighing off civil rights and rehabilitation vs. undue burden**, it stands to reason that inmates who do not receive needed aids and services during incarceration are **penalized** for having a disability and live in a “**prison within a prison.**”¹⁸ This means that prolonged communication deprivation can lead to mental health conditions, irreversible loss of communication and social abilities, and these inmates can be more susceptible to be victims of violence in detention facilities. The inmate may also take legal action against the institution that will most likely result in the courts mandating that the institution provide these services as discussed below.

The Issue of Identification

The use of visual identification for an inmate with a communication related disability is only permitted when **voluntary** and the inmate has the ability to **change their decision** about its use at any time. Appropriate mechanisms for such identification may include an identification card, bracelet, vest, or badge indicating the nature of the disability and preferred method of communication, which the inmate can carry on their person and present to staff and/or other prisoners as necessary. An identification sign indicating the nature of the disability and preferred method of communication can be placed on the inmate’s cell door or above their bed.

The Issue of Hand Restraints and Effective Communication

A reasonable individualized assessment of an inmate regarding any present security threat should be done. If a threat is absent, then the Deaf inmate who uses sign language to communicate should not

have their hands restrained when there is a potential need for communication, including with telecommunication devices. Where needed, **consider removing restraints in a secure environment** when other security devices are in place to permit safe removal of the hand restraint. Where restraints are necessary, assess the use of less restrictive alternatives (such as leg restraints that can be attached to a permanently affixed security device or object) that allows the inmate’s hands to be in the front of their body providing sufficient flexibility for the ability to raise at least one hand and to freely move the hand and fingers. The same security process should be used for inmates who are blind or have low vision who use white canes or rely on their hands to self-navigate or ambulate.

Court Cases and Legal Obligations

Numerous court cases have illustrated the types of accommodations facilities may have to provide to ensure its disabled inmates can communicate effectively. These have included systems that inform inmates of announcements made by loudspeaker, access to videophones, sign language interpreters, hearing aids, batteries for hearing aids, video remote interpreting systems, inmate helpers, visual alarms, and other auxiliary aids. Further, courts have found that inmates are entitled to these types of accommodations in a wide variety of settings, ranging from religious services, medical consultations to disciplinary hearings.

Roadmaps of Compliance

The settlements and court cases below can be “**lessons learned**” and used to create effective communication infrastructures that comply with the ADA by affording equal access and opportunity for inmates who have disabilities that affect their communication.

[United States v. South Carolina Department of Corrections](#), DJ # 204-67-174, (Settlement Agreement, March 29, 2018)

The Department of Justice ADA settlement agreement with the South Carolina Department of Corrections (SCDC) ensures that the SCDC will provide communications with inmates who have a hearing disability that are as effective as communications with other inmates. The SCDC must honor the choice of the auxiliary service or aid by the individual with a disability, unless the SCDC can demonstrate that another effective means of communication exists.

The SCDC is also required to make the determination of the appropriate auxiliary aids and services during its initial assessment at intake. Effective means must be provided for critical communication, complex information, lengthy exchanges, or anything involving legal or other due processes. This can include the following programs and activities:

- orientation,
- disciplinary hearings,
- classification,
- medical care,
- psychological services,
- educational/vocational programs,
- programs that are required for parole or early-release,
- classification review interviews,
- grievance processes,
- religious services, and
- pre-release instructions.

The SCDC is also required to provide an effective visual or other notification system so that inmates who have a hearing disability do not miss announcements, alarms, or other auditory instruction and information.

The SCDC must also ensure that inmates who have hearing disabilities are cuffed or restrained in a manner that permits effective communication (e.g., cuffing inmates in the front so they can sign; having one hand free in order to write) unless legitimate safety concerns dictate otherwise.

Holmes v. Baldwin, 11-cv-2961 (N.D. Ill. July 26, 2018)

The class action lawsuit settlement agreement, among the many requirements, included staff training, accommodations at inmate orientation, making communication devices/technologies available, making television accessible, removal of hand restraints for Deaf and hard of hearing inmates when they are communicating through ASL, ensuring that inmates are not transferred solely because of their deaf or hard of hearing status, considering requests of Deaf or hard of hearing individuals to be housed together, ASL interpreters for all high stakes interactions, implementing tactile alert systems, creating and disseminating accessible materials, and ensuring access to prison employment.

Brown v. Dep't of Public Safety and Correctional Services, 17-cv-945 (D. Md. June 6, 2019)

The complaint alleged that blind prisoners lacked equal access to prison services and privileges because they had to rely on others for help with all print materials such as mail, commissary, grievances, asking for medical help, educational information and were not provided auxiliary aids or services that would have allowed the plaintiffs to navigate through the prison. DPSCS also failed to provide access to the services, benefits, activities, programs, and privileges available to other inmates. The complaint included that the blind inmates suffered physical and sexual abuse as a result of discriminatory policies and practices in that the safety concerns of blind inmates when double celling prisoners was not considered. The parties reached a settlement agreement requiring the DPSCS to provide assistive technology for the blind inmates in order to comply with the ADA and other applicable laws. Requirements included the implementation of several corrective measures, such as computers that convert text to voice, assigning blind prisoners to single cells, providing Braille instructors and other instruction that will allow blind prisoners to live and learn independently, making educational materials available on tape, and assigning counselors to assist blind inmates with legal materials, medical requests, and mail.

Video Remote Interpreting (VRI)

United States v. Arthur, DJ # 204-79-325, (Settlement Agreement, November 17, 2016)

The Deaf complainant was incarcerated for 40 days and requested ASL interpreters numerous times but the Arlington County Sheriff's Office (ACSO) instead used unqualified staff. The settlement stated VRI regulatory requirements and limitations that VRI cannot be used if ineffective due to person's limited ability to move their head, hands, arms, vision or have cognitive issues, or significant emotional distress/pain or space limitations in a room. ACSO is required to call an on-

site interpreter if the technology is broken and staff cannot get the VRI functioning properly within 30 minutes. ACSO is also required to overhaul how it addresses the needs of inmates with disabilities, including: hiring a full-time ADA Coordinator, providing ADA training to correctional staff, properly screening and assessing inmates with disabilities during intake, contracting with sign language interpreting services, and procuring suitable telecommunication equipment for inmates who are deaf or hard-of-hearing. ACSO also paid \$250,000 to the inmate in compensatory damages.

Videophones

The Video Relay System is a video device for individuals who use **ASL to communicate**. A facility can have a device which is recorded and used for personal communication with family and friends and a second device that is a non-recorded system in which is used for legal calls. Expect continuing litigation cases where advocates argue that the goal of effective communication cannot be fully realized until facilities are required to provide videophones for inmates who communicate with ASL. As a note, **ASL is not English** and is the primary language for many people who are culturally Deaf.

It is notable to mention that as a result of settlement terms in [*McBride v. Michigan Department of Corrections*](#), 294 F.Supp.3d 695 (E.D. Mich. 2018), the Michigan Department of Corrections has done extensive reforms to date, including the incorporation of video phones that conform with security rules. MDOC has shared their innovated operational policies and procedures with relevant groups such as the National Corrections ADA Coordinator Information Sharing Group (see Resources section for information on NCACISG). Contact the ADA coordinator at MDOC for information regarding their program access advances.

To explore further what is transpiring in recent court cases addressing effective communication ADA compliance see the following cases. As previously mentioned, information gleaned can be applied to develop ADA compliant policies and practices.

- [*Yeh v. United States Bureau of Prisons*](#), 3:18-cv-00943 (M.D. Pa. Jun. 16, 2020).
- [*Adams & Knights v. Kentucky*](#), 3:14-cv-00001 (E.D. Ky. Dec. 24, 2020).
- [*Rogers v. Colorado Department of Corrections*](#), 1:16-cv-02733 (D. Co Feb. 7, 2020). The case entered a two year consent decree during which time the Colorado Department of Corrections installed Sign Language Video Phones in multiple facilities. The consent decree and case are now closed.
- [*Heyer v. United States Bureau of Prisons*](#), 5:11-ct-03118 (E.D.N.C.). Filed Date: June 20, 2011 / Case Ongoing

Extensive Policy and Procedures Examples

The Civil Rights Litigation Clearinghouse's [white paper on effective communication for incarcerated people with disabilities](#) is founded in court filings, judicial opinions, settlement agreements, and related resources, as well as interviews and workshops with advocates, experts, and inmates with disabilities.

For all-encompassing effective communication solutions in a myriad of settings and contexts and policy recommendation templates see [Effective Communication with Deaf, Hard of Hearing, Blind, and Low Vision Incarcerated People](#).

Federal Communications Commission 2022 Rules

The FCC adopted several requirements to improve access to communications services for incarcerated people with communication disabilities: [9-30-22 FCC Mandates TRS Access for Incarcerated People with Disabilities](#) (FCC 22-76).

Personal Services/Devices and Medical Care

Personal Services and Devices

Personal services and devices are generally not required to be provided to **visitors**, unless, for example, an accommodation for a mobility aid, such as crutches is legitimately denied for security reasons, then the facility must do what it can to provide access, such as providing a facility owned wheelchair that can be easily navigated by the visitor.

Given the nature of the facility, correctional institutions are required to provide necessary products and devices (including anything related to maintaining the product or device) and services that are tailored to the **inmate's** specific disability related needs and circumstances.

Devices and products can include but not limited to:

- canes / white canes,
- walkers,
- catheters,
- corrective lenses / glasses,
- urine pouches,
- wheelchairs,
- hearing aids / cochlear processors,
- necessary medications,
- prescribed orthopedic shoes,
- mattresses that prevent bed sores,
- oxygen,
- ostomy supplies,
- shower chairs,
- prostheses,
- orthodontic devices,
- therapeutic diets,
- raised toilet seats / grab bars,
- personal care assistance for hygiene, dressing, eating, etc., and
- blood sugar level testing equipment.

The product or device should be **tailored** to the inmate's specific needs and circumstances. A few examples of this are:

- Walkers and canes should be adjusted to the correct height of the person to allow for the best leverage and most support as well as for the preservation of an individual's posture.
- Wheelchairs can be lightweight, heavy, wide, narrow, have foot rests, have different weight and use time capacities, padding, etc., therefore a wheelchair should be able to meet the inmates distinctive disability related needs and condition.
- Ostomy supplies should be consistently purchased from the same company product brand to prevent skin reactions that can occur when having to use different brands of supplies. The product should properly fit the unique body and stoma which involves assuring the right size and type of skin barrier (wafer) that will adhere snugly and keep the peristomal skin healthy from becoming weepy, raw, rashy, or irritated.
- Prosthetic devices should fit correctly to avoid damaged, discolored or callused skin issues, pressure, weakness, and pain. This could require multiple fittings.

Wright v. New York State Department of Corrections, 2016 WL 4056036 (2nd Cir. July 29, 2016)
The court concluded that NYSDC absolute ban on motorized chairs in prison due to safety concerns effectively prevented the plaintiff from enjoying a wide range of prison services, and therefore, the prison was required to allow for exceptions to this policy when justifiably appropriate.

Proper Medical Care Can Be an ADA Issue

Facilities often have the common complaint by inmates of the lack of access to disability-related medical services and assistive devices. Negligent, inadequate, deliberately indifferent and intentional failure to provide mental and physical health care services, including the provision and maintenance of necessary products and devices, could possibly become an ADA/504 matter. It should be noted that insufficient health care for an inmate by a contracted medical provider could possibly result in ADA/504 violations for both the correctional institution and contractor.

Corbin v. Indiana, No. 3:2016cv00602 - Document 71 (N.D. Ind. Apr. 23, 2018)

The plaintiff stated an ADA claim when he alleged that he was placed in segregated housing because of his mental disabilities, including depression, post-traumatic stress disorder, and severe anxiety and that he was denied a service covered by the ADA and Rehabilitation Act due to that segregation placement.

Reaves v. Department of Corrections, 392 F. Supp. 3d 195 (2019)

“Massachusetts does not recognize capital punishment, yet the Department of Corrections...is, through its lack of treatment of his quadriplegia and its complications, slowly killing him. Before that happens...he will be transferred to a facility better equipped and more amendable to care for his medical needs.”

[Braggs v. Dunn](#), 2:14-cv-00601 (M.D. Ala. ongoing), filed in 2014, and [Disability Rights Florida v. Jones](#), 4:16-cv-00047 (N.D. Fla. ongoing), filed in 2016, addresses inadequate medical care by failure to, among other denied accommodations, provide hearing aids, provide and maintain wheelchairs and prosthetic devices for inmates with mobility impairments, leading to the exclusion of inmates with disabilities from education, employment, and recreational programs.

Personal Care Attendants

Personal Care Attendants (PCAs) should be well trained to assist inmates with their activities of daily living and their services must be safe and effective. It is advisable to be **very cautious** in setting up and implementing these necessary services.

ADA Accommodations and Interference, Harassment and Retaliation

Title V of the ADA prohibits coercing, threatening or retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

It could be a violation of the ADA to **interfere with a sanctioned accommodation**. For example, removing an inmate's wheelchair or white cane as a form of discipline could be seen as disability related harassment and retaliation. This is distinguished from when an accommodation is used as a weapon where the inmate may have forfeited the right to that accommodation which, in this case, the institution must work to see if access can be created by another means.

Armstrong v. Newsom, 4:94-cv-02307 (N.D. Cal. ongoing)

The case goes back to 1994 and is ongoing. An action was brought by John Armstrong and others in *Armstrong v. Brown* alleging widespread ADA and Rehabilitation Act violations at state prison facilities. The violations that the District Court sought to remedy stemmed from defective systems of accountability and a problematic culture whereby staff targeted disabled inmates for abuse. Some of the many ADA and other law violations identified and addressed by the court were:

- retaliation against inmates for submitting or threatening to submit staff misconduct complaints,
- failures to provide disability accommodations such as requests for wheelchair pushers and for showers after incontinence incidents,
- officers closing doors on class members with mobility disabilities,
- instances in which correctional officers retaliated against inmates with false rules violations reports by using unnecessary force when performing penological duties such as throwing class members out of wheelchairs, punching them, kicking them, or using pepper spray where the undisputed evidence shows that the class members posed no threat,
- an inmate had to leave his wheelchair behind to crawl upstairs to a hearing,

- a deaf inmate during his hearing could not communicate with the sign language interpreter due to their hands being shackled,
- a blind inmate said he was offered no help with complicated written materials, and
- an officer refused to stop shining a flashlight into the eyes of a vision-impaired class member who said that the light was painful and exacerbated his disability and when the class member asked to speak with a sergeant, another officer punched the inmate in the jaw.

For the most current information to the date of this case go to [Court Affirms One Order in Disabled-Inmates Abuse Case \(metnews.com\)](#).

Service Animals

Service Animals and Visitors

Visitors of inmates may use and be accompanied by their service animal anywhere the visitor is permitted. The facility can identify and incorporate these situations in the visitation process.

The **ADA definition** of a service animal is limited to a **dog** that is **individually** trained to do work or perform tasks for an **individual** due to **disability**. The key is recognition and response by the service animal to assist the individual with a disability. Also, a modification in policy must be considered to allow the specific breed of miniature horse (if reasonable), if it is trained to do work or perform tasks for that particular individual with a disability.

Only 2 inquiries are allowed if the need for the service animal is NOT obvious nor apparent:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

Do **not** make inquiries about a disability and a task demonstration **cannot** be asked for nor required.

The correctional entity is generally not responsible for the care or supervision of a service animal.

If a service animal truly affects the security of a facility, or is highly disruptive and the **handler does not take effective action** to control it, or the animal is **not housebroken**, the animal may be excluded from a detention facility visiting area. In these cases the facility may want to consider having procedures where the animal can be **safely crated** to avoid the visitor having to place their animal in a dangerously hot car or other unsafe situations. Once the animal is appropriately and safely removed the **visitor may remain** without the animal.

The animal **must** be harnessed, leashed, or otherwise tethered. There are only 2 limited exceptions to this rule:

- the handler is unable to use these because of their disability or
- the use would interfere with the safe and effective performance of work or tasks.

However, the unleashed service animal **must otherwise be under the handler's control** (i.e., voice control, signals, or other effective means).

Common Service Animal Questions

1. Does the dog have to wear a special harness or have a training certification proving that it is a legitimate service animal?

No! Many service animals are individually trained by their handlers.

2. Does the ADA cover comfort animals?

No! The ADA does not protect comfort/therapy/emotional support animals that do NOT meet the definition of an ADA service animal. A comfort animal is a passive animal that does not perform any individual tasks for its disabled handler.

Service Animal State Laws

Many states have passed service animal laws that are more stringent than the ADA. These laws can contain various provisions that address issues such as allowing in-training service animals, service animal misrepresentation, interference of a service animal, etc. To learn more, go to [specific states' service animal laws](#). Possible amendments and updates to existing state laws should also be researched.

Who Uses Service Dogs?

Examples of individuals who:

- are blind or have low vision use dogs to guide and assist with orientation,
- are deaf use dogs to alert them to sounds,
- have mobility disabilities can use dogs to pull their wheelchairs or retrieve items,
- have epilepsy may use a dog to warn them of an imminent seizure,
- have psychiatric disabilities may use a dog to remind them to take medication, and
- are service members returning from active duty with new disabilities as they reenter civilian life.

Service Animals and Inmates

A service animal can allow for the disabled inmate to become **more self-sufficient**. However, there are factors that the correctional institution **should consider** in allowing an inmate to have a service dog. These include how well the animal is trained, the facility's ability to adequately care for the animal in terms of safety, veterinary care, adequate daily routine care, etc.

If the facility has a dog-training program where the inmates **train the animals** to become adoptable or to assist individuals with disabilities, there could be a contemplation of allowance for an inmate to have a service animal of their own.

Given that correctional institutions are facing an aging population, where disability often accompanies age, well trained service dogs can assist in many activities of daily living that would otherwise have to be done by staff. Alleviating staff of such duties could be an aid to the facility.

For more information on ADA defined service animals:

- [Frequently Asked Questions about Service Animals and the ADA](#)
- [Service Animal and Emotional Support Animals. Where are they allowed and under what conditions?](#)

Mobility Devices / Other Power-Driven Mobility Devices

USDOJ has recognized that people with mobility, circulatory, respiratory, or neurological disabilities use **many kinds of devices** for mobility. Examples of these include walkers, canes, crutches, braces, manual or power wheelchairs and electric scooters. In addition, advances in technology have given rise to new devices, such as Segways®, used as a mobility device by people with disabilities.

USDOJ's regulations have always stated that ADA covered entities, **including correctional institutions**, must allow people with disabilities who use manual or power wheelchairs or scooters, and mobility aids such as walkers, crutches, and canes, into all areas where members of the public are permitted.

USDOJ expanded their ADA regulations that state covered entities, including correctional institutions, must allow people with disabilities who **use other types of power-driven mobility devices (OPDMDs)** into their facilities, unless a particular type of device cannot be accommodated because of legitimate safety requirements.

Where legitimate safety requirements bar modification for a particular type of OPDMD device, the covered entity, if possible, must provide the service it offers in **alternate** ways. The correctional facility can identify and incorporate these situations in the visitation process. If due to legitimate safety reasons the facility is unable to accommodate an OPDMD, it should consider a modification in policy, for example, that will enable the visitor to navigate to the visitation site by the facility providing a mobility device or allowing them to visit in an area that is a short accessible distance.

See [ADA Requirements: Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices](#) for more detailed information on how these regulations apply, especially those concerning other

types of power-driven mobility devices that are powered by batteries, fuel, or other engines (i.e., golf carts, Segways®, etc.).

Common Access Complaints by Inmates and Visitors Exercise

This guide is designed to be utilized by correctional facilities to educate and train all staff regarding their ADA responsibilities.

When training correctional staff and contractors, this section can be used to challenge the trainees to explore, in accordance with the ADA and Section 504 requirements, what violations have occurred.

The questions to ask and process with the trainees regarding the access issues complaints below are:

- Does the situation have to do with a modification/accommodation or effective communication or physical access?
- Once this is determined move onto identifying the possible violations and how the ADA/504 would then be applied in the particular situation.
- Determine what can be put in place to remove the disability related barrier to remedy the situation to create equal opportunity.

The Office of Justice Project has identified the following access issues:¹⁹

1. Inmates who take psychiatric medication are excluded from participating in drug treatment programs that are required to be eligible for parole.
2. Inmates with disabilities are excluded from job assignments, preventing them from earning good-time credits qualifying them for early release.
3. Inmates with disabilities are housed in the infirmary, segregated from the general population, unable to participate in the programs and activities available to other inmates.
4. Many complaints allege lack of accessible cells, toilets, and showers, steeply sloped sidewalks and floors or steps which keep inmates with mobility disabilities from accessing essential areas such as dining halls, libraries, and medical facilities.
5. Lack of personal assistance for those who require help with daily activities such as toileting, showering, or feeding - some inmates have received no assistance in toileting and have remained soiled for extended periods of time.
6. Lack of TTYs and policies that limit the length of TTY telephone calls (TTYs function in a way that takes longer than regular calls).
7. Denial of qualified sign language interpreters for classification interviews, medical appointments, required classes and treatment programs.

8. Missed medical appointments, pill call, or meals because these events were only announced orally.
9. Denial to access to books on tape, tape players, or large print format or Braille reading materials.
10. Not receiving necessary devices such as eyeglasses, hearing aids, wheelchairs, walkers, and canes, necessary medical equipment such as catheters, urine bags, and prescribed orthopedic shoes, and necessary medications such as insulin and seizure medications for inmates with disabilities.
11. Inmates with diabetes have also complained of not being able to test their blood sugar levels or get the proper diet prescribed by prison doctors.
12. Visitors with disabilities face difficulties due to lack of accessible parking, entrances, and visitation areas.

CONCLUSION

Correctional facilities have clear legal requirements that **protect the civil rights** of both inmates and facility visitors who have disabilities.

Inmates must have access to an appropriately trained and qualified person(s) who has the authority to ensure ADA compliance of civil rights protection and correctional procedures and practices must ensure that inmates with disabilities are treated fairly and have equal opportunity in all aspects of incarcerated life.

Correctional facilities have clear ADA obligations to ensure that **visitors** with disabilities can gain access equal to that of nondisabled visitors, including participation in any services and programs that include visitors. Facilities must ensure these visitors access through policy modification / accommodation, effective communication, and physical barrier removal.

Resources

This section is divided into the following categories. It's important to note that having access to resources can often generate additional useful resources.

General Resources and Publications

- Inclusive
- Intellectual/Developmental Disabilities
- Deaf and Hard of Hearing / Blind and Low Vision
- Assistive Technology
- Physical Access
- Medical Services

State and Federal Department Resources and Publications

- State Agency for Developmental Disabilities
- National Institute of Corrections
- U.S. Department of Justice
- U.S. Access Board
- Federal Communications Commission
- U.S. Department Of Health and Human Services

General Resources and Publications

Inclusive

[*ADA National Network | Information, Guidance and Training on the Americans with Disabilities Act*](#)

The ADA National Network, which includes the Southwest ADA Center as one of its members and the author of this publication, is comprised of 10 federally funded ADA Centers. The regional ADA Centers provide information, guidance and training on how to voluntarily implement the ADA in order to support the mission of the law to assure equality of opportunity and full participation for individuals with disabilities. All guidance and training to individual entities is confidential.

[*Civil Rights Litigation Clearinghouse*](#)

The University of Michigan Civil Rights Litigation Clearinghouse is an online database that provides comprehensive information and resources on civil rights lawsuits. The Clearinghouse aims to promote transparency, education, and research related to civil rights litigation by collecting, organizing, and analyzing data on civil rights cases, court decisions, and related legal materials, with the goal of advancing civil rights and social justice.

[Disability Counts - An RTC: Rural Product](#)

The dashboards and tools provide access to disability data including statistics on individuals who are institutionalized in correctional facilities. All dashboards contain filters allowing users to focus specifically on metropolitan, county, state, and national levels. The data sources are from the United States 2020 Census Bureau.

[ILRU Directory of Centers for Independent Living \(CILs\) and Associations](#)

CILs are community-based, cross-disability, non-profit organizations that are designed and operated by people with disabilities. CILs provide the services of peer support, information and referral, individual and systems advocacy, independent living skills training and transition from institutions.

[Job Accommodation Network](#)

JAN is a free, federally funded service that provides information, guidance, and resources to employers and individuals with disabilities to facilitate workplace accommodations. While their primary focus is on employment-related accommodations, JAN can also provide valuable assistance in identifying and addressing barriers in other diverse situations. Their website offers a wealth of solutions for various types of accommodations addressing barriers related to disabilities.

National Corrections ADA Coordinator Information Sharing Group

NCACISG is a safe environment for productive, positive information sharing and collaboration among ADA Coordinators and others who handle ADA issues within correctional institutions. This group is designed to facilitate the development of viable solutions that are in line with ADA compliance. For additional information, contact [Tiffany Fackler](#), PA DOC ADA Coordinator /NCACISG Chair, or fill out the [membership form](#).

National Disability Rights Network - [NDRN Member Agencies](#)

NDRN, a nonprofit membership organization, serves as the representative for federally mandated Protection and Advocacy Systems and Client Assistance Programs for individuals with disabilities. Established by Congress, NDRN is the singular legally based advocacy organization committed to safeguarding the rights of all individuals with disabilities, including those in correctional facilities. Their advocacy in the correctional system encompasses ensuring access to accommodations, healthcare, and disability-related services, while also addressing issues such as abuse, neglect, discrimination, and mistreatment of inmates.

Intellectual/Developmental Disabilities

[Alzheimer's Association | Alzheimer's Disease & Dementia Help](#)

The Alzheimer's Association is a nonprofit organization dedicated to supporting individuals living with Alzheimer's disease and related dementias and provides education, resources, and support services.

The Arc - State and Local Chapters - [Find a Chapter of The Arc](#)

State and local chapters of The Arc are community-based organizations that support individuals with intellectual and developmental disabilities (I/DD). These chapters provide a wide range of services and programs, including information and referral, advocacy, education, support groups, and social activities, to promote inclusion and quality of life for individuals with I/DD.

[Autistic Self Advocacy Network](#)

The Autistic Self Advocacy Network (ASAN) is a nonprofit organization that promotes the rights and well-being of autistic individuals through advocacy, education, and community-building efforts. ASAN embraces the principles of neurodiversity, advocating for acceptance, inclusion, and self-determination for people on the autism spectrum.

[Autism Society of America](#)

The Autism Society is a nonprofit organization that aims to improve the quality of life for individuals with autism spectrum disorder (ASD) through advocacy, support, and education.

Autism and the Criminal Justice System: Policy Opportunities and Challenges - [2022-insar_policy_brief_-_cr.pdf \(ymaws.com\)](#)

Preventing, reducing, and improving interactions between autistic individuals and the criminal justice system are urgent research and policy priorities. A diverse team of people with autism, family members, researchers, criminal justice system professionals, and policymakers formed the Global Autism and Criminal Justice Consortium to advance policy recommendations that span the entirety of the criminal justice system, which is often disconnected, using an adapted version of the Sequential Intercept Model (SIM). The revised SIM illustrates a cyclical process for how autistic individuals as victims and offenders interact with the various steps of the criminal justice system.

[Pathways to Justice](#)

Pathways to Justice is an initiative of The Arc's National Center on Criminal Justice and Disability. NCCJD assists in establishing local Disability Response Teams (DRT) composed of representatives from the disability and criminal justice communities. The DRT identifies barriers to justice and serves as a community resource on criminal justice and disability. NCCJD also provides in-person training covering crucial topics such as identification, interaction, and accommodation of individuals with intellectual and developmental disabilities and other disabilities.

Traumatic Brain Injuries in Corrections - [Home | TBI Corrections \(washington.edu\)](#)

The Traumatic Brain Injuries in Corrections project focuses on addressing the unique needs of individuals with TBI who are involved in the corrections system. The project aims to improve awareness, assessment, and intervention for this population to ensure appropriate support and care within the correctional setting.

[Traumatic Brain Injury: A Guide for Criminal Justice Professionals](#)

This publication is a resource designed to provide guidance to criminal justice professionals on understanding and responding to individuals with TBI who are involved in the criminal justice system. Topics such as the effects of TBI on behavior and cognition, identification and assessment of TBI, appropriate responses and accommodations, and community reintegration strategies are covered, with the aim of promoting fair and effective interactions with these individuals ensuring their access to justice and appropriate care within the criminal justice system.

[University Centers for Excellence in Developmental Disabilities - AUCD Home](#)

UCEDDs are interdisciplinary programs, typically affiliated with universities, that aim to advance research, education, and services for individuals with developmental disabilities. They collaborate with diverse stakeholders to promote inclusive policies, provide training, and technical assistance to improve the lives of these individuals.

Deaf and Hard of Hearing / Blind and Low Vision

[Hadley Vision Resources | 100 Years of Empowering Adults with Vision Loss](#)

Hadley is a nonprofit organization that provides distance education and resources to individuals with visual impairments or blindness by offering a wide range of educational programs, services, and resources, including braille literacy, assistive technology training, and practical skills development. Hadley is a partner of the [National Eye Institute](#) and the [National Eye Health Education Program](#).

Webinar: [Learning from Civil Rights Lawsuits: Effective Communication with Deaf, Hard of Hearing, Blind, and Low Vision Incarcerated People](#)

The Civil Rights Litigation Clearinghouse white paper summarizes federal anti-discrimination law requirements, recent litigation and reform efforts, and presents model policies endorsed by the National Association of the Deaf and the National Federation of the Blind. These policies cover areas such as intake procedures, staff training, provision of medical devices, auxiliary aids and services, and reasonable modifications and accommodations. They serve as a template for correctional administrators, legislators, and advocates working to change jail and prison policies, with potential applicability in other contexts. The model policies are found at [Effective Communication with Deaf, Hard of Hearing, Blind, and Low Vision Incarcerated People](#).

[National Association of the Deaf - NAD](#)

NAD works to promote equal access, communication, and opportunities for individuals who are deaf or hard of hearing through education and outreach efforts.

[Resources - National Deaf Center](#)

NDC is a federally funded nonprofit organization that focuses on improving educational and employment outcomes for Deaf individuals. NDC provides resources, tools, and support to Deaf individuals and educators to achieve success in education and employment, including working with persons who have a hearing loss, but don't know sign language. They also have information on working with interpreters and real-time captioning.

National Institute on Deafness, and Other Communication Disorders - [Home Page | NIDCD](#)

NIDCD is a research institute within the National Institutes of Health that conducts and supports research on communication disorders, including hearing loss, speech and language disorders, and balance disorders. The NIDCD aims to advance the understanding, diagnosis, treatment, and prevention of communication disorders through research, training, and public health efforts.

Assistive Technology

Association of Assistive Technology Act Programs - [Home - ATAP](#)

ATAP provides leadership, resources, and support to state and territory-based Assistive Technology Act Programs, which offer training and access to assistive technology devices and services, to ensure that individuals with disabilities have equal opportunities to participate in all aspects of life. To find each state's program go to [State/Territory AT Programs - AT3 Center](#).

Physical Access

Webinar: The ADA National Network and U.S. Access Board's [Accessible Detention and Correctional Facilities](#) archived training provides an excellent overview of the ADA and Architectural Barriers Act (ABA) accessibility requirements for detention and correctional facilities and reviews both scoping and technical provisions addressing holding cells and housing cells with mobility and communication features, visiting areas, and medical care facilities. This session also highlights applicable provisions for these facilities along with some additional requirements established by the USDOJ.

[Washington State Checklist for Department of Corrections](#)

This Checklist is designed to be a convenient tool for identifying architectural and communication barriers that may be encountered by people with disabilities in public and private buildings.

Medical Services

[ADA: Access to Health Care in Detention and Correctional Facilities - Mid-Atlantic ADA Center](#)

Direction on ensuring access to healthcare for individuals with disabilities in detention and correctional facilities. The guidance emphasizes the importance of providing reasonable accommodations and ensuring effective communication, including the use of qualified interpreters, auxiliary aids, and accessible medical equipment. The guidance also discusses the need for training staff on disability awareness and rights under the ADA, as well as the importance of creating an accessible physical environment.

[Seizure Disorders in Correctional Facilities](#)

The brief video contains actual and re-enacted footage of inmates experiencing seizures. It is intended to train and educate correctional officers and healthcare workers who provide frontline intervention to these individuals. The video is presented by the Epilepsy Foundation of Colorado and Wyoming, the Larimer County Sheriff's Office, and Mark C. Spitz, M.D.

State and Federal Department Resources and Publications

[State Agencies for Developmental Disabilities - *State Agencies - Nasddd*](#)

These state government agencies are responsible for developing, implementing, and overseeing policies, programs, and services for individuals with developmental disabilities (DD). These agencies work to promote inclusion, independence, and quality of life for individuals with DD through advocacy, funding, and coordination of services across various state agencies and community-based organizations.

[National Institute of Corrections](#)

The NIC is the only federal agency with a legislative mandate to provide specialized services to corrections from a national perspective. The NIC provides technical assistance, training, and materials to federal, state, and local detention and corrections systems. Training and materials address a wide variety of issues related to planning and implementing jail and prison programs, including workforce development, community re-entry, and working with victims. Many projects focus on disability or include disability-related components, such as health care, aging in prison, and working with inmates with mental illnesses.

U.S. Department of Justice

There are a wide variety of helpful ADA Title II publications at ADA.gov.

[ADA Best Practices Tool Kit for State and Local Governments](#)

The Tool Kit is a resource designed to assist state and local government agencies in understanding and implementing the ADA. This tool kit provides guidance, best practices, and practical examples to help state and local governments ensure compliance with the ADA and promote accessibility for individuals with disabilities in their programs, services, and facilities.

[Disabilities Reported by Prisoners - Survey of Prison Inmates](#)

This report by the U.S. Bureau of Justice Statistics provides information on the prevalence and types of disabilities reported by inmates in U.S. prisons. The report presents data on disabilities such as mobility, hearing, vision, cognitive, and self-care limitations, as well as the use of accommodations, medical care, and victimization experienced by prisoners with disabilities.

[*Communicating with People Who Are Deaf or Hard of Hearing ADA Guide for Law Enforcement Officers*](#)

This publication provides guidance to law enforcement officers on how to effectively communicate with individuals who are deaf or hard of hearing in accordance with ADA. The guide covers various topics, such as communication methods, legal requirements, and practical tips for ensuring effective communication and equal access for individuals with hearing disabilities in law enforcement encounters.

[*Commonly Asked Questions About The Americans With Disabilities Act And Law Enforcement*](#)

This publication provides answers to frequently asked questions regarding the application of the ADA in the context of law enforcement activities and covers topics such as the ADA requirements related to communication, arrest, detention, transportation, and reasonable accommodations for individuals with disabilities in law enforcement encounters.

[*ADA Criminal Justice: Ensuring Equality in the Criminal Justice System for People with Disabilities*](#)

This information contains USDOJ publications and settlements pertaining to Title II of the ADA related to programs and activities of law enforcement agencies, justice system entities, and juvenile and adult corrections agencies.

[*Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act*](#)

This reference provides guidance, examples, and resources to help criminal justice entities comply with Title II of the ADA. It includes practical examples, best practices, and resources to support accessibility, accommodation, and effective communication for individuals with disabilities involved in the criminal justice system.

[*Guidance on Web Accessibility and the ADA*](#)

This USDOJ guidance describes how state and local governments and businesses open to the public can make sure that their websites are accessible to people with disabilities as required by the ADA.

[*Questions and Answers about the Department of Justice's Notice of Proposed Rulemaking to Implement the Americans with Disabilities Act Amendments Act of 2008*](#)

This document provides questions and answers that clarify who can seek coverage under the ADA.

[*The Opioid Crisis and the ADA*](#)

USDOJ has implemented a comprehensive approach to address the opioid crisis, prioritizing prevention, enforcement, and treatment. This includes the enforcement of the ADA to protect individuals in recovery from opioid use disorder (OUD), including those who are taking legally-prescribed medication. While this document focuses on individuals with OUD, the legal principles discussed also apply to individuals with other types of substance use disorders.

[Office of Justice Programs](#)

The OJP is a part of the USDOJ that is responsible for providing leadership, resources, and funding to support programs and initiatives aimed at improving the nation's criminal justice system. OJP works to enhance public safety, prevent and reduce crime, and promote justice by funding research, training, and innovative programs, and providing support to law enforcement agencies, courts, corrections facilities, and other justice-related organizations.

U.S. Access Board

[U.S. Access Board - Home](#)

This independent federal agency promotes equality and accessibility for individuals with disabilities in the built environment and information and communication technology. The Access Board develops and maintains accessibility guidelines and standards, provides technical assistance and training to ensure that facilities, products, and services are accessible to people with disabilities in compliance with federal laws.

[Revised 508 Standards and 255 Guidelines](#)

These standards and guidelines apply to electronic and information technology procured by federal agencies.

Federal Communications Commission

[9-30-22 FCC Mandates TRS Access for Incarcerated People with Disabilities](#)

The FCC mandate requires Telecommunications Relay Service (TRS) access for incarcerated individuals with disabilities. This mandate aims to ensure that individuals with disabilities who are incarcerated have access to TRS, a service that allows individuals with hearing or speech disabilities to communicate over the telephone, in compliance with the ADA and other federal regulations.

[Telecommunications Relay Service - TRS | Federal Communications Commission \(fcc.gov\)](#)

TRS is a federally mandated service in the United States that enables individuals with hearing or speech disabilities to communicate over the telephone. TRS allows individuals with disabilities to make and receive calls using specialized relay operators who facilitate the communication between the parties involved, ensuring equal access to telecommunications services in compliance with the ADA.

U.S. Department Of Health and Human Services

[Aging and Disability Networks | ACL Administration for Community Living](#)

The ADN refers to a coordinated system of services and supports that are designed to address the needs of older adults and individuals with disabilities. These networks include federal, state, and local agencies, as well as community-based organizations, that work together to provide a wide range of services, such as health care, housing, transportation, employment support, and social services, to promote the health, well-being, and independence of older adults and individuals with disabilities.

[Substance Abuse and Mental Health Services Administration](#)

SAMHSA is dedicated to improving the prevention, treatment, and recovery support services for individuals with mental health and substance use disorders. SAMHSA provides leadership, resources, and technical assistance to promote behavioral health, reduce the impact of mental illness and substance abuse on individuals and communities, and improve the overall well-being of individuals affected by these conditions.

[Medications for Substance Use Disorders | SAMHSA](#)

Information on medications that are approved for the treatment of substance use disorders, including opioids, alcohol, and tobacco. The resource covers the different types of medications available, their benefits, risks, and appropriate use, as well as their role in comprehensive treatment approaches for individuals with substance use disorders, in line with evidence-based practices and guidelines.

¹ Laura M. Maruschak et al., “Survey of Prison Inmates, 2016 Disabilities Reported by Prisoners,” NCJ 252642, March 2021, <https://uat.bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf> (Accessed March 26, 2023).

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<p>For additional information and questions contact your Regional ADA Center at 1.800.949.4232 (V/TTY). To find your Regional ADA Center go to www.adata.org.</p>
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