

Interacting with Individuals with Disabilities in Law Enforcement

About this module

Goal: To provide an overview of how the ADA applies to law enforcement practices and interactions with individuals with disabilities

Format: Lecture

Time: 30 minutes

Potential audience: Law enforcement personnel, other Title II entities, and individuals with disabilities

Materials needed:

- Hard copy of presentation, optional. Offer to send a text version to those who need it after the session.

Facilitator's Tips for this Module

This module provides an overview of the ways in which the ADA applies to law enforcement practices and interactions with individuals with disabilities.

There has been a lot of attention in the media about interactions between law enforcement personnel and people with disabilities. While this module may be used alone, it may be more effectively used along with other modules, such as Module 2e. Everyone is Different: A Review of Types of Disability. If your session is for people in a community where there have been issues with law enforcement personnel interacting with individuals with non-obvious disabilities, you may want to use this module along with Module 2i: Non-obvious Disabilities: Legal, Practical and Human Considerations.

Please encourage participants to contact their regional ADA Center at 1-800-949-4232 with questions.

Here are a few “do’s” and “don’ts” to consider when facilitating this module:

Do:

- Keep the presentation moving forward, finishing the module in the time promised.
- Do a little background preparation. Review this guide and familiarize yourself with the reports and cases referenced in the facilitator notes.
- Ask participants to hold their questions/comments until the end of the module.
- Remind participants that you cannot provide a decision on specific cases.
- Refer participants with specific cases to the ADA Center TA line (800 949 4232)

Don't:

- Get derailed by questions related to very unusual or unlikely scenarios.
- Try to give answers when you are not sure. It's perfectly fine to refer participants to the ADA Center TA call line for more detailed or complicated questions.

ADA Trainer Network
Module 5g

Interacting with Individuals with Disabilities in Law Enforcement

Trainer's Name
Trainer's Title

Phone Number
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National Network
Information, Guidance and Training on the
Americans with Disabilities Act

Facilitator's Notes (Slide 1)

This session is designed to provide an overview of how the Americans with Disabilities Act (ADA) applies to law enforcement practices and interactions with individuals with disabilities.

Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DP0071-01-00. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.



Facilitator's Notes (Slide 2)

Advise participants that the session is not intended as legal advice.

Why is this topic important?

- 1 in 5 Americans has a disability (Brault, 2010)
- Will encounter this group in many capacities
- Public entities have a responsibility to ensure they are accessible (physically, programmatically, web, etc.)
- Different disabilities, and different people = different needs



Facilitator's Notes (Slide 3)

Some people might be under the misconception that the number of disabilities will decrease. However, the number of people with disabilities will continue to grow due to aging, war-related injuries, and better identification and treatments.

Public entities must be prepared to meet the needs of individuals with disabilities in a variety of ways. Each type of disability requires a different kind of response in terms of services, programs, physical access, and web/electronic access. And even when two people have the same disability, they may have different needs.

It is notable that people with disabilities are twice as likely as those without disabilities to be the victims of crime. A report from the Department of Justice Bureau of Justice Statistics determined that people with disabilities experienced nonfatal violent crime at an age adjusted victim rate of 28 per 1000 versus 15 per 1000 for the general population. (Harrell, Department of Justice, Bureau of Justice Statistics, October 2011).

Law enforcement officials need to be prepared to interact with individuals with disabilities as members of the general public, as witnesses, as victims, and as perpetrators.

What is the Americans with Disabilities Act (ADA)?

- A federal civil rights law
- Protects individuals with apparent and nonvisible disabilities from discrimination

Facilitator's Notes (Slide 4)

The Americans with Disabilities Act of 1990, is a civil rights law which prohibits discrimination against individuals with both obvious disabilities such as people who use wheelchairs, crutches or other mobility aids as well as nonvisible disabilities such as learning disabilities and chronic health conditions. It is designed to ensure the opportunity for full community participation of individuals with disabilities in all facets of community life.

The ADA has 5 Titles. This session focuses on Title II – state and local law enforcement. However, the Title I provisions around employment also apply to law enforcement organizations.

Who has a disability?

- ADA defines disability as,
 - a physical or mental impairment that substantially limits a major life activity;
 - a record of such an impairment; or
 - being regarded as having such an impairment
- Can include physical, mental health, hearing, visual, cognitive, learning, mobility, etc.
- It does not cover current illegal use of drugs



Facilitator's Notes (Slide 5)

This slide shows the basic definition of disability under the ADA.

The term disability can mean different things in different contexts.

There are many types of disabilities, not just physical or mobility impairments. Disabilities include limitations in hearing, visual, cognition, learning, brain injury, attention deficit, medical conditions such as cancer, as well as intellectual challenges and mental health conditions. This is not a complete list but rather, a sample of the many types of conditions that might be considered disabilities under the law.

Five Titles of the ADA



- Title 1. Employment
Prohibits disability discrimination in all employment processes
- Title 2. Accessibility in public entities
Physical and program accessibility in state/local govt. entities
- Title 3. Accessibility in businesses
Physical and program accessibility in restaurants, hotels, stores, places of business
- Title 4. Telecommunications
Accessibility of telephone and communications systems for the public
- Title 5. Miscellaneous
Protection from retaliation



Facilitator's Notes (Slide 6)

The Americans with Disabilities Act of 1990, is a civil rights law which prohibits discrimination against individuals with both obvious disabilities such as people who use wheelchairs, crutches or other mobility aids, as well as nonobvious disabilities such as learning disabilities and chronic health conditions. It is designed to ensure the opportunity for full community participation of individuals with disabilities in employment and other facets of community living.

The ADA covers a wide variety of situations faced by individuals with disabilities in their everyday lives.

How does the ADA apply to Law Enforcement?

- Title II of the ADA covers all State and local government entities
- Covers facilities, services, programs, and activities
- Examples: 911 service, the local police station or state barracks, interviewing a witness, etc.



Facilitator's Notes (Slide 7)

Title II of the ADA covers any State or local Government or any department, agency, special purpose district, or instrumentality of state or local government.

It is important to mention that Title II applies to services (911), to physical facilities (police station), and to programs.

ADA Summary

Cannot discriminate against a qualified individual with a disability in:

- Services, procedures, goods, and programs
- Employment process (application, hire, promotion, dismissal)
- Government services carried out by contractors
- Activities of State and local judicial branches
- Public Transportation



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Facilitator's Notes (Slide 8)

This slide summarizes that State and local entities cannot discriminate against that people with disabilities in any of the programs, services, and employment opportunities offered by a local or state government entity, if they are otherwise qualified.

An example of judicial activities would be a legal proceeding involving an individual who is deaf. It would be the court's responsibility to provide a sign language interpreter for them.

Responsibilities in Brief

- Must modify policies, practices, and procedures to avoid discriminating against or excluding people with disabilities UNLESS to do so would cause a fundamental alteration
- Must look at the accessibility of programs, services, and activities as a whole
- Not required to remove barriers from each existing facility; but still must ensure access to the benefits and services of a program or activity



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Facilitator's Notes (Slide 9)

Under the ADA, State and local governments need to do certain things in order to allow for participation by people with disabilities.

Policies, practices, and procedures must be modified, unless this would cause a fundamental alteration. A fundamental alteration means: a modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered. For example, if there is a Police Athletic League (also known as a Police Activity League or PALS) that runs a city wide basketball tournament for teens aged 14-16 and a 30 year old with a disability wants to participate, it could be considered a fundamental alteration of the program to allow the man to participate. Having an older player would fundamentally alter the tournament.

A public entity's services, programs, and activities, when viewed in their entirety, must be readily accessible to and usable by people with disabilities. While physical access to programs and facilities is preferable, a Title II entity's main responsibility is to offer programmatic access. Assessing an agency's accessibility must be done in its entirety; meaning that both its physical access and programmatic accessibility must be considered as a whole to determine if an entity is meeting its Title II requirements.

If physical barrier removal is not possible then entities still must ensure access to benefits and services. For example if you have to meet with someone who uses a wheelchair and your usual meeting space is on second floor and there's no elevator, then you would need to relocate the meeting to an accessible location, that is comparable in privacy and confidentiality for the person.

Service Animals

- A dog (or possibly a miniature horse)
- Assist people with variety of disabilities including psychiatric
- May or may not be harnessed/identifiable
- Must be allowed to enter public facilities, even if there is a "No Pets" policy
- Can ask "is this a service animal?" and "what task has the animal been trained to perform?"
- Cannot impose additional fees, surcharges, deposits, etc. for having/allowing a service animal



Facilitator's Notes (Slide 10)

Service animals are a good example of a common modification public entities might need to make to their policies. Even if you have a "no pets" policy, this cannot apply to service animals. Service animals are not pets; they work with individuals with many types of disabilities: vision, hearing, mobility, physical, neurological, and psychiatric disabilities.

Often, people think of service animals and think only of guide dogs. In fact, service animals perform a variety of tasks such as seizure alert, picking up objects, and offering hearing assistance. The Department of Justice's 2010 Title II regulations clarify what constitutes a service animal:

any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability" The lone exception for a species of animal is for a miniature horse. Animals that provide comfort, such as a therapy animal, are not covered as a service animal.

Note; there is no federal license for a service animal.

If you encounter a person with a service dog, it's important to try and make sure they are not separated from the dog. Similar to a wheelchair, cane, hearing aid, etc. service dogs provide much needed assistance to their owners and their owners need that assistance in multiple situations. Service dogs are trained to be calm and well behaved.

Mobility Devices

- Today people use a variety of types of wheelchairs and other devices to get around
- Use must be permitted unless it can be demonstrated that such use would be a fundamental alteration or a legitimate safety concern



Facilitator's Notes (Slide 11)

Wheelchairs (and other power driven mobility devices (OPDMDs)) must be permitted in all areas open to pedestrian use. A wheelchair is defined as: a manually operated or power driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor and outdoor locomotion. OPMDs may specifically be designed for those with mobility issues as well as products not designed specifically for people with mobility impairments such as the Segway® PT that nevertheless may be used for mobility assistance.

OPDMDs are defined as: Any mobility device powered by batteries, or fuel, or other engines, which is used by individuals with mobility disabilities for the purpose of locomotion whether or not it has been designed primarily for use by individuals with mobility disabilities. OPDMDs can be prohibited from an area if it would fundamentally alter a program, service, or activity. Also, use of an OPDMD can be prohibited if it poses a legitimate safety risk or health hazard.

The DOJ's rule lists factors to consider in making this determination:

- (a) "The type, size, weight, dimensions, and speed of the device;
- (b) The volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (c) The design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

- (d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- (e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

Careful thought must be applied to each situation. For example, a woman with a mobility impairment uses a Segway to move around. She is coming into the police station to attend a domestic violence program that is being held on site. She cannot be banned from the site simply for using the Segway instead of a standard manual or power wheelchair. The station could have a policy regarding a maximum speed for safe operation of an OPMD, but the woman and her device must be allowed to operate in the facility as long as she complies with that policy.

Effective Communication

- Must take appropriate steps to ensure communications with individuals with disabilities are as effective as communications with others.
- May need to offer auxiliary aids and services such as:
 - Hearing disabilities — Qualified interpreters, written materials, assistive listening devices, closed captioning, transcription services, note-takers, video remote interpreting (VRI)
 - Visual disabilities — Braille, screen readers, large print, qualified readers, physical guidance
 - Cognitive disabilities — Readers, clear and concise language, graphic presentation, communications assistants, repetition



Facilitator's Notes (Slide 12)

This slide introduces the requirement of effective communication. Shown here are some ways that effective communication could be provided to people with different types of disabilities. This is one of the areas in which law enforcement agencies encounter the most legal issues. There have been numerous Department of Justice cases against law enforcement agencies. For example, see the Department of Justice settlement agreement with the County of Alameda Sheriff's Office on February 4, 2010. <http://www.ada.gov/bonner.htm>

The case involved a deaf blind man, Mr. Bonner, who was never provided a tactile interpreter while being held on charges for two days. Those charges were dropped.

In another example, the DOJ settled with New York City's Police Department in November of 2009 regarding three complaints against the NYPD for failing to have appropriate policies and procedures in place for arresting and interviewing individuals who are deaf. See the settlement at: <http://www.ada.gov/nypd.htm>.

In each case the County/City had to create a plan to ensure effective communication. Further, because they are Title II entities, primary consideration had to be given to the individual's preferred way of communicating. More about this on the next slide.

Effective Communication (Cont.)

- Must give “primary consideration” to the communication preference of the person with a disability
- Must be effective
- If undue burden exists, must still provide the next best means of effective communication



Facilitator's Notes (Slide 13)

In regard to effective communication for Title II entities, “primary consideration” must be given to the person with a disability. This means that Title II entities must provide the individual’s primary choice of effective communication unless it would be an undue financial or administrative burden. It is important to keep in mind that the undue burden standard is high; it requires the head of the entity in question to assess all of the resources available to the entity and then to provide a written statement explaining the finding.

Even in cases of legitimate undue burden, effective communication must be provided using the next best option.

Effective Communication (Cont.)

- Must have a equal level of communication
- TTYs or equally effective telecommunications systems must be available
- Automated-attendant systems must be accessible
- Must respond to telephone calls from a relay service in the same manner as other telephone calls



Facilitator's Notes (Slide 14)

The central theme of this slide is the fact that whatever a Title II entity wants to communicate information, there must be equal communication access for people using auxiliary aids to communicate.

Therefore, TTYs or other kinds of effective communication systems must be used to communicate with individuals who are deaf or hard of hearing or who have speech impairments.

Automated systems must provide effective real-time communication with individuals using auxiliary aids and services.

You may receive calls using relay service- where a third party translates communication between a deaf individual and your office. You need to treat these the same way as you would with a caller not using relay service. Typical confidentiality rules don't apply to the person translating information via the relay service; they are simply relaying the information back and forth in the language that both the caller and you need.

Physical Access

- All new construction and alterations to existing facilities must be readily accessible to and usable by people with disabilities
- Don't have to make an existing facility accessible if able to provide program access
- If program access not possible, then must provide structural access unless it would result in undue burden or fundamental alteration



Facilitator's Notes (Slide 15)

In existing facilities, Title II entities may not have to provide physical access if they are able to offer the program, service, or activity in an inaccessible location in an alternate location or in an alternate method; this goes back to the idea of looking at the program in its entirety, mentioned before.

The alternative location or method must grant full and equal access to the program, service, or activity. If this cannot be done, then creating physical access may be the only option.

When Serving the Public

- You may not know right away if there is a disability present, or what specifically it is
- Treat with respect and in an age-appropriate manner
- Be attentive to how the person needs to communicate and interact
- Ask the person for guidance or clarification, if uncertain - person knows their needs best



Facilitator's Notes (Slide 16)

As discussed before, there are many types of disabilities. Here are some general tips for interacting with people with disabilities.

The next few slides detail how to interact with individuals with different kinds of disabilities. It is important to note that most of the suggestions rest on treating every person with respect and as an adult, being attentive to how the individual chooses to interact, and being willing to ask for guidance if uncertain.

Emerging Practices

- Development of Crisis Intervention Teams (CITs)
- National Center on Criminal Justice and Disability - bridging service gaps between law enforcement and people with intellectual and developmental disabilities



Facilitator's Notes (Slide 17)

Crisis intervention teams or "CITs" are a developing trend in police departments. They are made up of officers who have received specialized intensive training in working with individuals with psychiatric disabilities. Community groups and hospital representatives are also part of these teams. CITs are designed to improve law enforcement's interactions and outcomes with people with mental health issues. Some of the skills learned by trained officers include recognizing different psychiatric disabilities, techniques for communicating with individuals who have specific disorders, and de-escalating a crisis situation.

The Arc received funding from the Bureau of Justice Assistance (BJA), the U.S. Department of Justice to create The Arc's National Center on Criminal Justice and Disability (NCCJD). This is the first national effort to bring together both victim and suspect/offender issues involving people with intellectual and developmental disabilities (I/DD) under one roof.

NCCJD will serve as a national clearinghouse for information and training on the topic of people with I/DD as victims, witnesses and suspects or offenders of crime. The Arc will partner with a broad spectrum of criminal justice professionals, including those in the law enforcement, legal and disability fields at the national, state and local levels to create safer lives for people with I/DD who become involved in the criminal justice system.

For more information see: <http://www.thearc.org/NCCJD>

Additional Resources

- Americans with Disabilities Act: Information for Law Enforcement: <http://www.ada.gov/policeinfo.htm>
- Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement: http://www.ada.gov/q%26a_law.htm
- Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers: <http://www.ada.gov/lawenfcomm.htm>
- Department of Justice Title II ADA Technical Assistance Manual: www.ada.gov/taman2.htm
- CIT International (Crisis Intervention Team International)
<http://www.citinternational.org/>



Facilitator's Notes (Slide 18)

This slide provides some additional resources about interaction of law enforcement personnel with individuals with disabilities.

Your regional ADA Center provides training and technical assistance on all Titles of the ADA. Please call 1-800-949-4232 for more information.

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Facilitator's Notes (Slide 19)

National Network: Please insert your centers contact information into this slide.

Conclude by reminding participants that the training materials were produced by the Northeast ADA Center in collaboration with the National ADA Network. Remind them of the free and confidential technical assistance and other services available from your local ADA Center and from the ADA Centers throughout the country. Mention the ADA TA line: 800-949-4232.