

# The ADA In State and Local Courts, Law Enforcement and Detention Facilities



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# Disclaimer

Opinions Expressed Herein or Otherwise are those of the Speaker and do not Necessarily Reflect the Views of the United States Department of Justice.

# Educational Objectives

- Develop an understanding and awareness of the ADA.
- Recognize ADA issues in law enforcement, state and local courts and detention facilities.

# Overview

1. Background on the ADA.
2. The ADA covers a broad range of disabilities.
3. Statistics on the number of individuals with disabilities.
4. Overview of the ADA provisions that cover entities in the criminal justice system.
5. ADA substantive requirements.
6. ADA structural requirements.
7. Application of the ADA to specific entities in the criminal justice system.
8. Ignorance is not a valid defense.

# Most Important ADA Resource: ADA.gov



**Information and Technical Assistance  
on the Americans with Disabilities Act**

United States Department of Justice  
Civil Rights Division

Search ADA.gov  
 go  
More Search Options

[Law / Regulations](#)   [Design Standards](#)   [Technical Assistance Materials](#)   [Enforcement](#)

### New on ADA.gov

**Georgia Network for Educational and Therapeutic Support / U.S. v. Georgia (N.D. Ga. 2016)**  
Complaint (posted 8/23/16)

**Final Rule Implementing ADA Amendments Act of 2008 (titles II and III)** - Published in the Federal Register August 11, 2016 (posted 8/11/16)

**Harris County, Texas**  
U.S. Complaint (posted 8/04/16)

**SANPRM Comment Period Extended**  
Closes October 7, 2016

**Beyond the Cases: 26 Years of the ADA** | PDF  
The Lives, Faces, and Stories Behind the ADA (posted 7/28/16)

**YMCA of the Triangle**  
Settlement Agreement (posted 7/28/16)

**Twenty Six Years of the Americans with Disabilities Act: The Lives, Faces and Stories Behind the ADA**  
Justice Blog Post (posted 7/26/16)

**Byesville, Ohio**  
Settlement Agreement (posted 7/18/16)

**Omaha Performing Arts Society**  
Settlement Agreement (posted 7/14/16)

**The Natural Epicurean Academy of Culinary Arts**  
Settlement Agreement (posted 7/5/16)



**U.S. v. Greyhound Lines, Inc. Settlement Agreement**

**Claims Process Available Here**

**INTRODUCTION TO THE ADA**

Publications and videos that answer these questions and more: What is the ADA? Who is a person with a disability? Who must comply with the ADA? Where can you call to ask questions about the ADA?

### Featured Topics



**U.S. Attorney Program for ADA Enforcement Barrier-Free Health Care Initiative**

1 2 3 4 5 6 7 8 9 10

### File a Complaint

**Instructions for filing a complaint**

# What Is Covered By ADA?

The ADA prohibits discrimination and ensures equal opportunities for persons with disabilities in:

- Employment (Title I)
- State and local government services (Title II)
- Public accommodations (Title III)

# Title II Covers Public Entities

All state and local governmental entities are covered by Title II, including the following entities operated by state and local governments:

- 1) Law enforcement agencies.
- 2) Courts.
- 3) Jails and correctional facilities.
- 4) Community corrections, including probation, work release and pre-trial services.
- 5) Public defender services.
- 6) State and local social service agencies, including the Community Service Board.
- 7) Healthcare providers operated by state and local governments.
- 8) Educational institutions.
- 9) Websites affiliated with state and local agencies.

# Animating Principle of the ADA

No qualified 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. 42 U.S.C. § 12132; *see also* 28 C.F.R. §§ 35.130(a); 35.152(b)(1).

**The ADA is a broad civil rights statute that covers a wide range of activities.**

# Definition of Disability

- A physical or mental impairment that substantially limits one or more major life activities (*e.g.*, hearing, speaking, and seeing).
- A record of such an impairment.
- Being regarded as having such an impairment.

42 U.S.C. § 12102; 28 C.F.R. § 36.105 (note that DOJ recently promulgated regulations related to the definition of disability to conform to the ADA Amendments Act of 2008).

# Major Life Activities (examples)

- Walking
- Performing Manual Tasks
- Seeing
- Breathing
- Hearing
- Caring For One's Self
- Working
- Standing
- Lifting
- Bending
- Concentrating
- Learning
- Speaking

# Major Life Activities Include Major Bodily Function (examples)

- Immune System
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Respiratory
- Circulatory

# Condition That Rise To the Level of a “Disability” (Examples)

- Deafness or hard of hearing
- Blindness
- Intellectual Disability
- Mental illness (e.g., PTSD, bipolar disorder, TBI, and schizophrenia)
- Partially or completely missing limbs
- Mobility impairments
- Autism
- Cancer
- Cerebral Palsy
- Diabetes
- Epilepsy
- Addictions
- Hypertension
- Digestive disorders

# Some Disabilities May be Invisible (examples)

- Mental illness
- Epilepsy
- Arthritis
- Hypertension
- Diabetes
- Intellectual disabilities
- Digestive disorders
- Cancer
- HIV

# Federal Government Statistics

- The Census Bureau reports that approximately 56.7 million people living in the US had some kind of disability in 2010.
- The National Institute on Deafness and Other Communication Disorders (NIDCD) reports that one in eight people in the United States (13 percent, or 30 million) aged 12 or older has hearing loss in both ears, based on standard hearing examinations.
- NIDCD reports that approximately 7.5 million people in the United States have trouble using their voices.

# Federal Government Statistics

- According to the Census Bureau, approximately 7.3 million individuals in the United States report significant vision loss.
- According to the Centers for Disease Control, 36.2 million adults have some kind of physical functioning difficulty.
- The National Institute of Mental Health reports that in 2014, 9.8 million adults aged 18 or older have a serious mental illness that substantially interferes with or limits one or more major life activities.

# Disability Statistics in Local Jails

Bureau of Justice Statistics Report explained that 40 percent of local jail inmates report having at least one disability. *Disabilities Among Prison and Jail Inmates, 2011-12* (DOJ Publication December 2015)

## DOJ's Regulations and Technical Assistance Given Deference

**Congress delegated to DOJ the authority to promulgate regulations under, issue technical assistance for, and seek enforcement in federal court of title II. Accordingly, DOJ's ADA regulatory materials are entitled to deference.** *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998) (“As the agency directed by Congress to issue implementing regulations, . . . to render technical assistance explaining the responsibilities of covered individuals and institutions, . . . and to enforce Title III in court, . . . the Department [of Justice]’s views are entitled to deference”); *see also Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999).

# Law Enforcement Activities

The ADA affects virtually everything that [police] officers and [sheriff's] deputies do, for example:

Receiving citizen complaints;

Interrogating witnesses;

Arresting, booking, and holding suspects;

Operating telephone (911) emergency centers

Providing emergency medical services

Enforcing Laws

And other duties.

**Commonly Asked Questions About The Americans With Disabilities Act And Law Enforcement (DOJ Publication)**

# DOJ Technical Assistance Publication For Law Enforcement

“Title II of the Americans with Disabilities Act (ADA) protects individuals with mental health disabilities and intellectual and developmental disabilities (I/DD) from discrimination within the criminal justice system. Pursuant to the ADA, state and local government criminal justice entities—including police, courts, prosecutors, public defense attorneys, jails, juvenile justice, and corrections agencies —must ensure that people with mental health disabilities or I/DD are treated equally in the criminal justice system and afford them equal opportunity to benefit from safe, inclusive communities.”

**Examples and Resources to Support Criminal Justice Entities in Compliance With Title II of the ADA (DOJ Publication)**

## DOJ Technical Assistance Publication For Law Enforcement

**“Nondiscrimination requirements, such as providing reasonable modifications to policies, practices, and procedures and taking appropriate steps to communicate effectively with people with disabilities, also support the goals of ensuring public safety, promoting public welfare, and avoiding unnecessary criminal justice involvement for people with disabilities.”**

**Examples and Resources to Support Criminal Justice Entities in Compliance With Title II of the ADA (DOJ Publication)**

# Reasonable Modification Requests

“The reasonable modification obligation applies when an **agency employee knows or reasonably should know that the person has a disability and needs a modification**, even where the individual has not requested a modification, such as during a crisis, when a disability may interfere with a person’s ability to articulate a request.”

**Examples and Resources to Support Criminal Justice Entities in Compliance With Title II of the ADA (DOJ Publication)**

# Examples of reasonable modifications

“A [police] department modifies the procedures for giving Miranda warnings when arresting an individual who has [I/DD]. Law enforcement personnel use simple words and ask the individual to repeat each phrase of the warnings in her or his own words. The personnel also check for understanding, by asking the individual such questions as what a lawyer is and how a lawyer might help the individual, or asking the individual for an example of what a right is. Using simple language or pictures and symbols, speaking slowly and clearly, and asking concrete questions, are all ways to communicate with individuals who have [I/DD].”

**Commonly Asked Questions About The Americans With Disabilities Act And Law Enforcement (DOJ Publication)**

# Examples of reasonable modifications

“A department modifies its regular practice of handcuffing arrestees behind their backs, and instead handcuffs deaf individuals in front in order for the person to sign or write notes.”

“A department modifies a rule that prisoners or detainees are not permitted to have food in their cells except at scheduled intervals, in order to accommodate an individual with diabetes who uses medication and needs access to carbohydrates or sugar to keep blood sugar at an appropriate level.”

“A department modifies its practice of confiscating medications for the period of confinement, in order to permit inmates who have disabilities that require self-medication, such as cardiac conditions or epilepsy, to self-administer medications that do not have abuse potential.”

# ADA's Systemic Requirements

The ADA requires state and local governmental entities to take affirmative steps to ensure compliance with the ADA.

Anticipating and preparing for disability-related needs are key to success.

# ADA Self-Evaluation

The ADA regulations state:

“A public entity, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.” 28 C.F.R. § 105(a).

# ADA Coordinator

The ADA regulations provides that:

“A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part [of the ADA Regulations].”

“The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.” 28 C.F.R. 35.107.

# ADA Coordinator

The section-by-section Analysis of the ADA Regulations explain the rationale for the designation of an ADA Coordinator:

**“The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act [ADA] and this part [of the ADA regulations] and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities.”**

# ADA Grievance Procedures

- Public entities with 50 or more employees must have published ADA grievance procedures providing for the prompt and equitable resolution of ADA complaints. 28 C.F.R. § 35.107 (b).

# Preparing for Disability-Related Needs

Criminal justice entities should prepare for all types of disability-related needs. For example, with regard to I/DD, DOJ explains:

“It is important that criminal justice entities anticipate and prepare for the disability-related needs of people with mental health disabilities or I/DD. Training criminal justice personnel, conducting reviews of policies and procedures, and collaborating with mental health and disability services providers are three ways to achieve that end.”

**Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act**

## Law Enforcement Activities (effective communication)

“A municipal police department encounters many situations where effective communication with members of the public who are deaf or hard of hearing is critical. Such situations include interviewing suspects prior to arrest (when an officer is attempting to establish probable cause); interrogating arrestees, and interviewing victims or critical witnesses. In these situations, appropriate qualified interpreters must be provided when necessary to ensure effective communication.” U.S. Dep’t of Justice, *Americans with Disabilities Act: Title II Technical Assistance Manual 1994 Supplement* § II- 7.1000(B), illus. 3 (Nov. 1993 & Supp. 1994).

ADA regulations generally prohibit public entities from using friends and family members to facilitate communication with individuals with disabilities. 28 C.F.R. § 35.160(c)(2).

# ADA Regulations Address A Known Problem: Relying on Accompanying Adults

“Historically, many covered entities have expected a person who uses sign language to bring a family member or friend to interpret for him or her. These people often lacked the impartiality and specialized vocabulary needed to interpret effectively and accurately.”

Effective Communication Technical Assistance (2010).

# Law Enforcement Activities

DOJ recently filed an *amicus brief* in *City and County of San Francisco v. Sheehan*, No. 13-1412 (United States Supreme Court), in which the Solicitor General (“SG”) expressed the view of the United States Government with regard to the ADA’s coverage to local law enforcement activities as follows: “[t]he statutory text [of the ADA] further demonstrates that law enforcement entities are subject to Title II’s anti-discrimination mandate with **respect to all of their operations, including arrests.**” *Id.* at 19 (emphasis added). The SG went on to explain: “[b]ecause law enforcement entities are subject to Title II, they must ‘make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.’” *Id.* at 22 (citing 28 C.F.R. 35.130(b)(7); Title II Technical Assistance § II-3.6100, at 14).

# State and Local Courts

Access to state and local courts and the ability of individuals with hearing disabilities to participate in such proceedings were **a special concern that Congress considered** when it enacted the ADA. *See, e.g., Tennessee v. Lane*, 541 U.S. 509, 527 (2004) (explaining that “Congress learned that many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities,” and citing legislative testimony concerning the “failure of state and local governments to provide interpretive services for the hearing impaired”).

# State and Local Courts

“Because of the importance of effective communication in State and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. **Qualified interpreters will usually be necessary to ensure effective communication with parties, jurors, and witnesses who have hearing impairments and use sign language.** For individuals with hearing impairments who do not use sign language, other types of auxiliary aids or services, such as assistive listening devices or computer-assisted transcription services, which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays, may be required.”

Title II Technical Assistance Manual, II-7.1000

# State and Local Courts

In *Prakel v. Indiana*, 100 F.Supp.3d 661 (S.D. Ind. 2015), the court held that because there is a clear history of the public's right to attend criminal proceedings, being a **spectator** of a court proceeding is included within Title II's protections.

## Settlement Agreement with Orange County Clerk of Courts (DOJ case)

Inaccessibility of filed court documents for blind attorney.  
Court agrees to ensure documents in accessible format upon request.

# ADA Applies To State And Local Prisons

The ADA's Title II implementing regulations expressly cover "jails, detention and correctional facilities" run by state and local governments. 28 C.F.R. § 35.152.

The Supreme Court has expressly held (in a unanimous decision) that the ADA's requirements apply to state and local detention centers. *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998); See also Title II Regulations, 2010 Guidance and Section-by-Section Analysis.

ADA applies to contractors for correctional organizations. 28 C.F.R. § 35.152.

# DOJ Has Emphasized The Importance of Correctional Facilities Complying With The ADA

“The Department wishes to emphasize that detention and correctional facilities are unique facilities under title II. Inmates cannot leave the facilities and must have their needs met by the corrections system, including needs relating to a disability. If the detention and correctional facilities fail to accommodate prisoners with disabilities, these individuals have little recourse, particularly when the need is great (e.g., an accessible toilet; adequate catheters; or a shower chair). **It is essential that corrections systems fulfill their nondiscrimination and program access obligations by adequately addressing the needs of prisoners with disabilities, which include, but are not limited to, proper medication and medical treatment, accessible toilet and shower facilities, devices such as a bed transfer or a shower chair, and assistance with hygiene methods for prisoners with physical disabilities.**” Section-by-Section Guidance and Analysis of the ADA Regulations

# ADA Applicable To All Aspects of Corrections

- Booking
- Classification
- **Phone calls**
- Inmate visits
- **Medical and Dental Care**
- **Mental Health Services**
- Pill Line
- Cell Assignment
- Bed Assignment
- Religious Services
- Mail Call
- **Education**
- **Library Services**
- **Work Release**
- Recreation
- **Transportation**
- Dining Services
- Job Assignment
- Good Time Credit
- Trustee Jobs
- Toileting
- **Conducting Investigations**
- **Disciplinary Hearings**

# The ADA Mandates Ensuring That Individuals With Disabilities Are Not Excluded From Programs Offered By Public Entities, Including Corrections

“Correctional and detention facilities commonly provide a variety of different programs for education, training, counseling, or other purposes related to rehabilitation. Some examples of programs generally available to inmates include programs to obtain GEDs, computer training, job skill training and on-the-job training, religious instruction and guidance, alcohol and substance abuse groups, anger management, work assignments, work release, halfway houses and other programs. . . . **[I]t is critical that public entities provide these opportunities to inmates with disabilities.**”

Section-by-Section Guidance and Analysis of the ADA Regulations

# The ADA Requirements Apply To Contractors that Operate In A Correctional Facility

“[T]hrough its experience in investigations and compliance reviews, the Department [DOJ] has noted that public entities contract for a number of services to be run by private or other public entities, for example, medical and mental health services, food services, laundry, prison industries, vocational programs, and drug treatment programs, **all of which must be operated in accordance with [the ADA’s] title II requirements.**”

Section-by-Section Guidance and Analysis of the ADA Regulations

# A State Is Responsible for Ensuring That Other Public Entities That Provide Correctional Services For A State Inmate Comply With Title II of the ADA

“[I]f a State enters into a contractual, licensing, or other arrangements for correctional services with a public entity that has its own title II obligations, the State is still responsible for ensuring that the other public entity complies with title II in providing those services.”

Section-by-Section Guidance and Analysis of the ADA Regulations

# How to Address The Needs of An Inmate with a Disability

- Appropriately screen for individuals with disabilities during intake.
- Obtain the assistance of health and mental health professionals.
- Maintain communication with the individual with the disability during the assessment.
- Respond to an individuals with a disability on a case-by-case basis.
- Individualized assessment is key.
- Recognize that one size solutions do not fit all situations.

# Correctional Facilities Frequently Must Take Affirmative Steps

In *Pierce v. District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015), a case involving the DC Detention Center, the Court wrote:

**“[A]n entity that provides services to the public cannot stand idly by while people with disabilities attempt to utilize programs and services designed for the able-bodied; instead, to satisfy Section 504 and Title II, such entities may very well need to act affirmatively to modify, supplement, or tailor their programs and services to make them accessible to persons with disabilities.”**

## Pursuant to the ADA, Correctional Facilities Have An Affirmative Duty To Take Appropriate Steps Regarding Inmates With Disabilities

“[B]ased on its reading of federal law, this Court holds that prison officials have an **affirmative duty to assess the potential accommodation needs of inmates with known disabilities** who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison’s programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation and without relying solely on the assumptions of prison officials regarding that individual’s needs.”

*Pierce v. District of Columbia, Pierce*, 128 F.Supp.3d 250, 272 (D.D.C. 2015)

# Correctional Facilities Must Provide Inmates With Information on How To Access Accessible Services

- The ADA regulations require public entities to ensure that interested persons, including those with disabilities, are able to obtain information on accessible services:

“A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.”

28 C.F.R. § 35.163; *see also* 28 C.F.R. § 35.106.

# Issues That Have Arisen in ADA Cases (Systemic Issues)

- Failure to have an ADA Coordinator who understands the ADA's requirements and to disseminate the identity of the ADA Coordinator to inmates and the public.
- Failure to conduct periodic audits of a detention facility's ADA compliance, including architectural and audits of technology such as VRI.
- Failure to conduct a needs assessment when law enforcement or a detention facility learns about an inmate's disability.
- Failure to conduct ongoing needs assessment to ensure that an inmate's disability related needs are being met.

## Issues That Have Arisen in ADA Cases (Systemic Issues)

- Failure to conduct an individualized assessment regarding the type of action that is required.
- Using an eligibility requirement for programs such as work assignments that tends to screen out individuals with disabilities.
- Failure to have effective ADA grievance procedures.
- Failure to provide information to inmates and the public on the existence and location of accessible services, activities, and facilities.

# ADA Effective Communication

## Requirements

- Ensure that communications with detainees with hearing and vision disabilities are as effective as communications with others, which includes furnishing auxiliary aids and services that will ensure effective communication.
- Use flashing lights, note card or other methods of communication to notify inmates who are deaf or have low hearing about events such as count, meals, yard, sick call, and when it is time to wake up.
- Ensure that discipline is not used for an inmate not responding to instructions that s/he could not hear or could not read.

# Issues That Have Arisen in ADA Cases (Effective Communication)

- Failure to obtain auxiliary aids or services for detention facility services and programs such as medical care, mental health services, support groups (e.g., AA) and education classes.
- Failure to obtain auxiliary aids or services for events that arise outside of business hours.
- Enlisting unqualified staff members or other inmates to facilitate communication or otherwise provide assistance to an inmate with a disability.
- VRI issues: (1) staff does not know to set up VRI and/or (2) the VRI system is not working properly and/or (3) using VRI in inappropriate situations.
- Failing to have books on tape, large print books and readers.
- Failing to caption video programs.

## Issues That Have Arisen in ADA cases (Effective communication)

- Failure to provide a sign language interpreter for complex communications.
- Failure to give “primary consideration” to the request of an individual with a communication disability on the type of auxiliary aid or service with ensure effective communication.
- Refusal to provide auxiliary aids and services due to cost.
- Inappropriate reliance on hand-written notes for individuals whose primary means of communication is American Sign Language.
- Erroneously assuming that an individual who is deaf or hard of hearing can read lips and does not need an auxiliary aid or service.

# Problems With Using Staff Who Signs “Pretty Well”

*Can a public entity use a staff member who signs “pretty well” as an interpreter for meetings with individuals who use sign language to communicate?*

**Signing and interpreting are not the same thing.** Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. **The interpreter must be able to interpret both receptively and expressively.**

Americans with Disabilities Act, Technical Assistance Manual, §§ II-7.1200.

# Is Certification Necessary?

If a sign language interpreter is required for effective communication, must only a certified interpreter be provided? No. The key question in determining whether effective communication will result is whether the interpreter is “**qualified**,” not whether he or she has been actually certified by an official licensing body. A qualified interpreter is one “who is able to interpret **effectively, accurately and impartially**, both **receptively** and **expressively**, using necessary **specialized vocabulary**.” An individual does not have to be certified in order to meet this standard. A certified interpreter may not meet this standard in all situations, *e.g.* , where the interpreter is not familiar with the specialized vocabulary involved in the communication at issue.

Americans with Disabilities Act, Technical Assistance Manual, § III-4.3100 (emphasis added).

# VDDHH's Discussion of "Qualified Interpreter"

Perhaps the biggest misconception concerning interpreting for people who are deaf or hard of hearing is the generally-held assumption that a beginning course in sign language or fingerspelling is a sufficient qualification to work as an interpreter. **A person who knows conversational sign language does not necessarily possess the expertise required to perform well in the role of an interpreter.** Professional interpreting requires intense training and experience before proficient levels of skill are attained.

Virginia Department of the Deaf and Hard of Hearing, Directory of Qualified Interpreters for the Deaf and Hard of Hearing, at 3 (emphasis in original).

# Effective Communication Case in Corrections

Settlement with Arlington County (VA) Sheriff (“ACSO”). The ACSO failed to furnish a sign language interpreter to an inmate who was incarcerated for 40 days and provided a telecommunication device (TTY) that the inmate could not use because he could not read and write in English. Pursuant to the settlement, the ACSO is required to completely revamp 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 appropriate telecommunication equipment for people who are deaf or hard-of-hearing (e.g., videophones, captioned telephone and hearing aid compatible phones). The ACSO also paid \$250,000.00 to the inmate in compensatory damages.



# Proper Medical Care Can Be An ADA Issue

## Issues That Have Arisen in ADA cases (Medical)

- Failure to provide proper medical care to individuals with disabilities, including medications, diabetic monitoring, medical equipment (CPAP device, catheters, urine bags, and cleaning supplies).
- Failure to provide medically necessary special diets.
- Failure to provide medically necessary shoes.

# ADA Physical Access Issues

- The 2010 ADA Standards for Accessible Design provide comprehensive requirements for correctional facilities. *E.g.*, Sections 232 & 807.
- Conducting an architectural audit is essential to understanding whether a facility is ADA compliant.

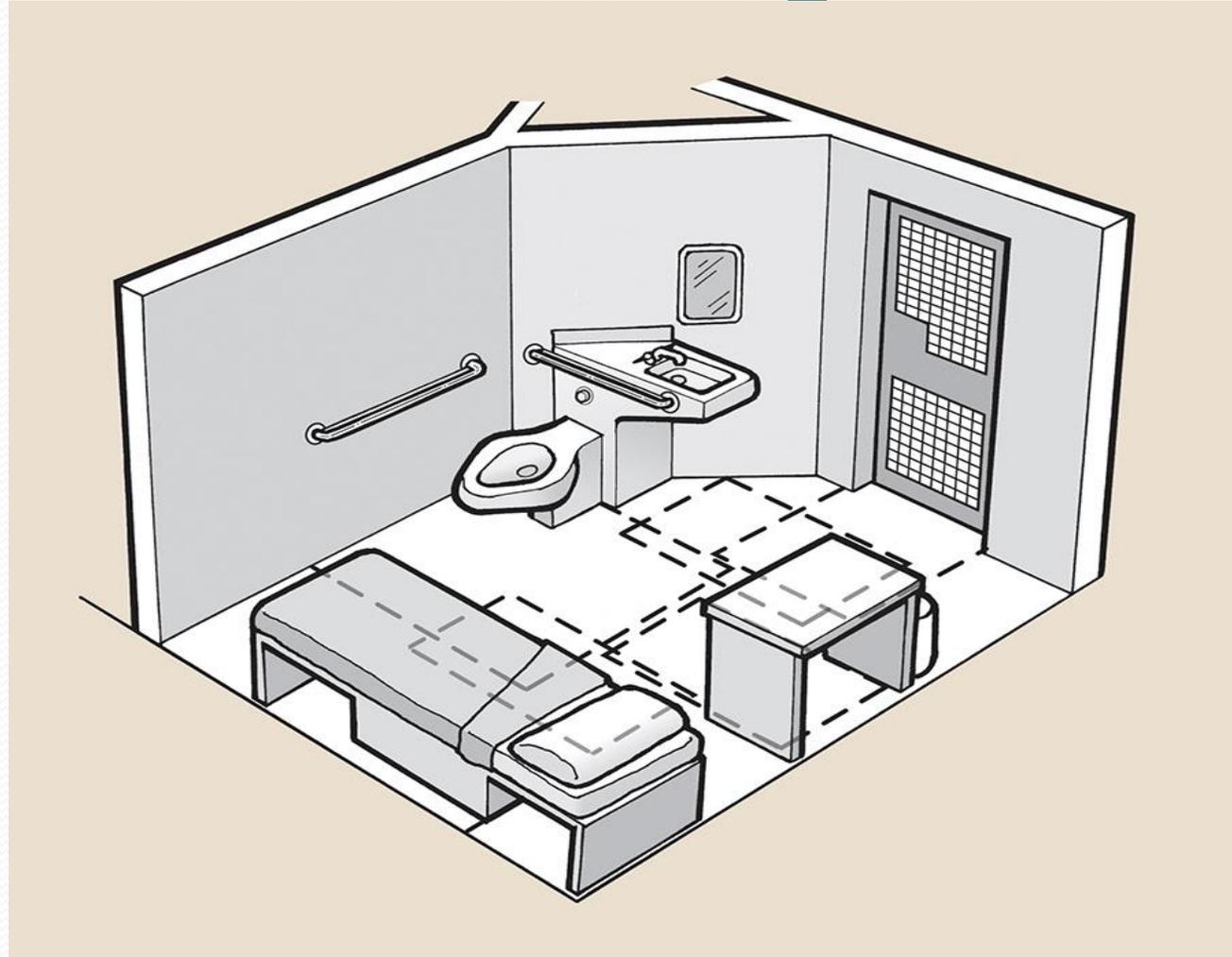
# Public / Detainee Spaces & Elements That Must Be ADA Compliant

- Parking lot
- Entrance
- Check-in counter
- Waiting room
- Interview room
- Visitation areas
- Drinking fountains
- All public areas
- Housing
- Classrooms
- Infirmary
- Work
- Visitation
- Dining
- Toilets / showers
- All inmate spaces

# 2010 Regulations and Standards (Examples)

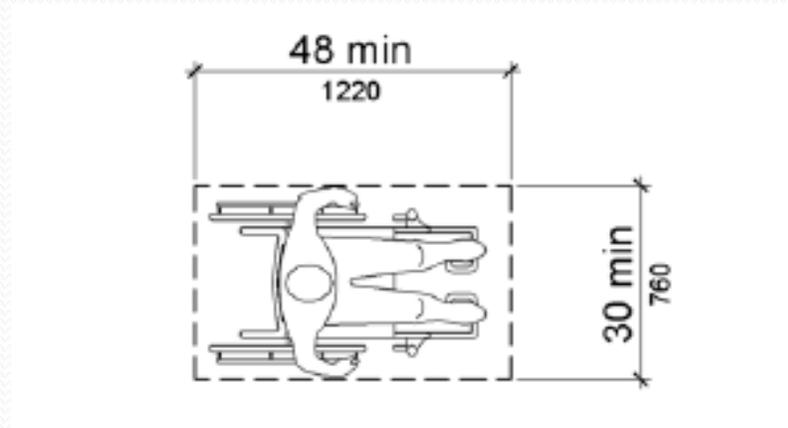
- 3% of the total number of cells in a facility must have mobility features
- Cells with mobility features shall be provided in each classification level
- At least 1 cell for each special purpose

# Accessible Housing

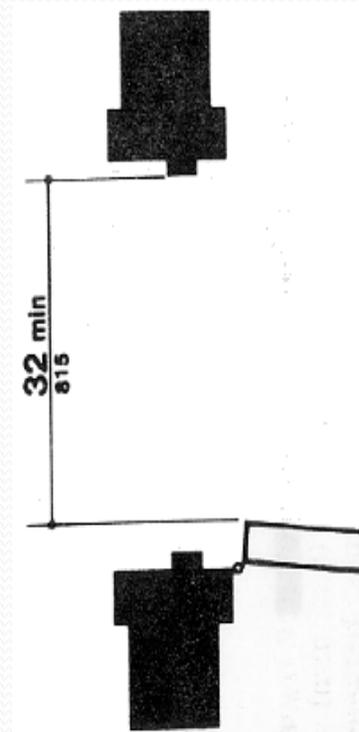
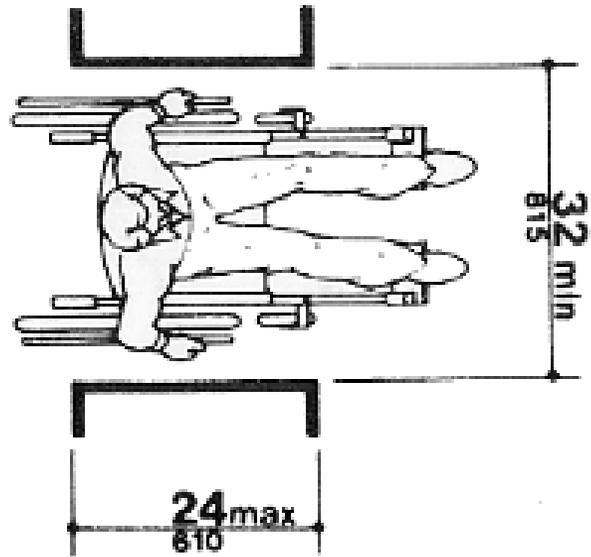


# 2010 Regulations and Standards

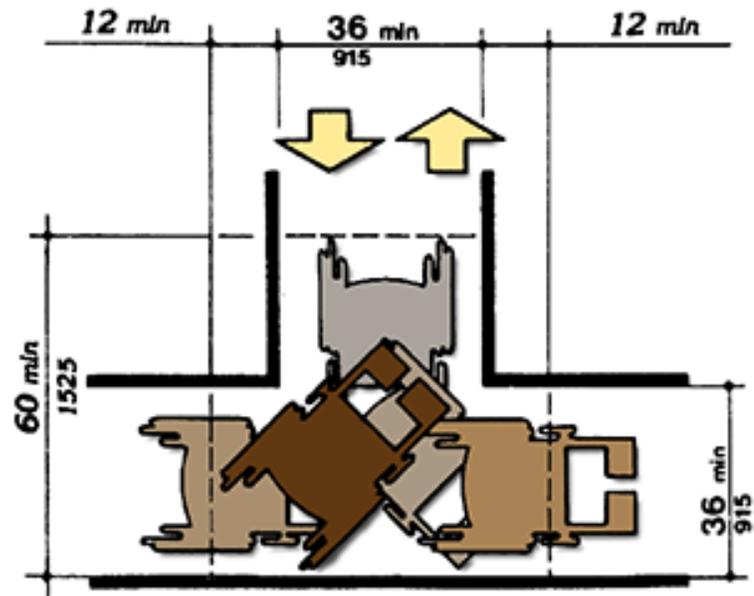
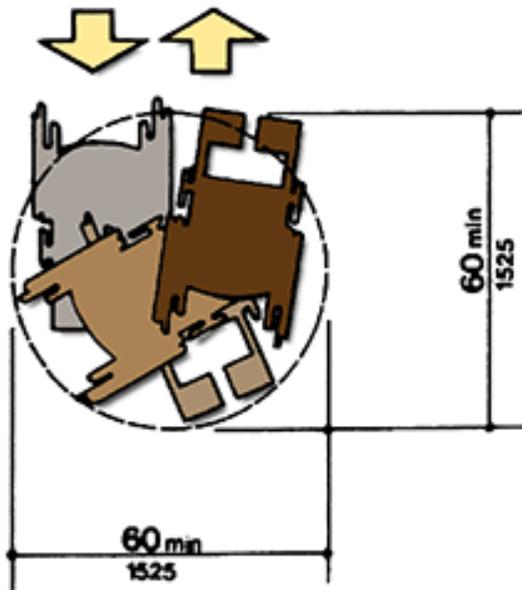
- 5% of beds in dormitories with 25 or more must have clear floor space by the bed



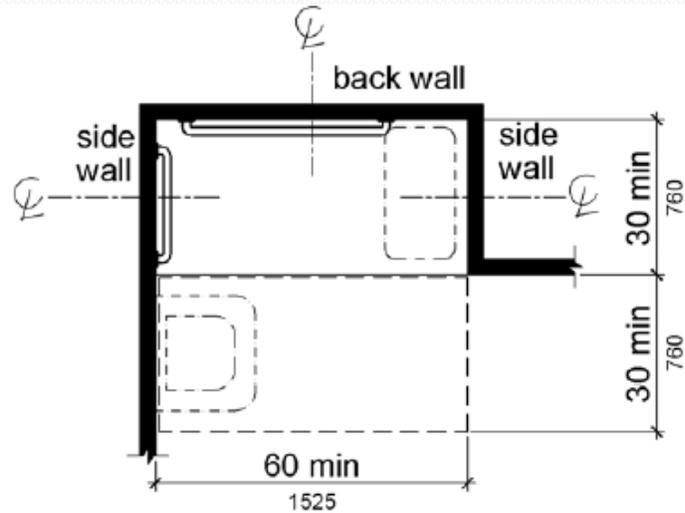
# 32" Clear Door Width



# Turning Space



# Standard roll-in shower compartments



Note: inside finished dimensions measured at the center points of opposing sides

30" wide x 60" deep



# Medical and Long-term Care



2010 Standards apply whether facility licensed or not

## Issues That Have Arisen in ADA cases (Physical Access)

- Failure to have accessible showers.
- Failure to have accessible routes to program areas.
- Failure to have accessible transportation.
- Failure to have sufficient number of cells that are accessible.
- Failure to have accessible recreation areas.

# Detention Facilities Shall

Place detainees with disabilities

- In housing consistent with security classifications
- In settings with the accessible elements necessary to afford access to safe, appropriate housing

# Detention Facilities Shall

Place detainees with disabilities

- In the most integrated housing appropriate to the needs of the inmate
- In settings that provide equal access to all programs for which an inmate would otherwise be entitled

# Detention Facilities Shall **NOT**

Place detainees with disabilities

- In inappropriate security classifications because there is no accessible cell or bed
- 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

# Elements for Successful ADA Compliance

- Understand the ADA and how it applies to your organization, law enforcement, the courts and correctional facilities.
- Designating an ADA Coordinator, **who understands the ADA's requirements** and has **sufficient authority** within the organization to ensure compliance.
- Train staff who have direct contact with individuals protected by the ADA on the requirements of the ADA and on how to access required services and equipment.
- Develop a process to make the appropriate ADA assessments and handle ADA requests that include communication with individuals with disabilities to ascertain their needs.

# Elements for Successful ADA Compliance

- Easy access to auxiliary aids, including sign language interpreters, for staff.
- Conducting periodic ADA audits, including VRI machines, architectural access, ensuring access to services and programs
- Regularly consulting with individuals with disabilities to determine whether their disability related needs are being met.
- Holding regular meetings with staff responsible for ADA compliance to discuss issues that have arisen.

# Elements for Successful ADA Compliance

- Developing procedures to ensure proper documentation when dealing with ADA issues.
- Encouraging staff to be open to issues of individuals with disabilities and to ask questions.
- Seeking technical assistance when necessary.
- Establishing an effective and timely grievance procedure.

# Staff Training is Critical

A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. A public entity may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Public entities should teach staff about the ADA's requirements. Many disability organizations can provide ADA trainings.

# ADA Myths

- “ADA Approved”  
There is no national process for proving ADA-related goods or services
- “ACA and NCCHC Accreditation equals compliance with ADA”  
It does not
- “Compliance with local and State codes equals compliance with ADA”  
It does not

# ADA Reminders

- Do not retaliate against anyone exercising his or her ADA rights.
- Do not coerce someone into not exercising rights under the ADA.
- Do not impose a surcharge for anything required by the ADA.

# Ignorance of the ADA's Legal Requirements Is Not a Valid Defense

As one court recently noted: “[t]he ADA seeks to prevent not only intentional discrimination against people with disabilities but also – indeed primarily – discrimination that results from ‘thoughtlessness and indifference,’ that is, from ‘benign neglect.’” *Brooklyn Cntr for Independence of the Disabled v. Bloomberg*, 980F. Supp.2d 588, 640 (S.D.N.Y. 2013) (quoting, H.R.Rep. No. 101-485(II), at 29 (1990)).

# Most Important ADA Resource: ADA.gov



**ADA**.gov  
United States Department of Justice  
Civil Rights Division

**Information and Technical Assistance  
on the Americans with Disabilities Act**

[More Search Options](#)

[Law / Regulations](#)   [Design Standards](#)   [Technical Assistance Materials](#)   [Enforcement](#)

### New on ADA.gov

**Georgia Network for Educational and Therapeutic Support / U.S. v. Georgia (N.D. Ga. 2016)**  
Complaint (posted 8/23/16)

**Final Rule Implementing ADA Amendments Act of 2008 (titles II and III)** - Published in the Federal Register August 11, 2016 (posted 8/11/16)

**Harris County, Texas**  
U.S. Complaint (posted 8/04/16)

**SANPRM Comment Period Extended**  
Closes October 7, 2016

**Beyond the Cases: 26 Years of the ADA** | PDF  
The Lives, Faces, and Stories Behind the ADA (posted 7/28/16)

**YMCA of the Triangle**  
Settlement Agreement (posted 7/28/16)

**Twenty Six Years of the Americans with Disabilities Act: The Lives, Faces and Stories Behind the ADA**  
Justice Blog Post (posted 7/26/16)

**Byesville, Ohio**  
Settlement Agreement (posted 7/18/16)

**Omaha Performing Arts Society**  
Settlement Agreement (posted 7/14/16)

**The Natural Epicurean Academy of Culinary Arts**  
Settlement Agreement (posted 7/5/16)



**U.S. v. Greyhound Lines, Inc. Settlement Agreement**

**Claims Process Available Here**

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**INTRODUCTION TO THE ADA**

Publications and videos that answer these questions and more: What is the ADA? Who is a person with a disability? Who must comply with the ADA? Where can you call to ask questions about the ADA?

### Featured Topics



**U.S. Attorney Program for ADA Enforcement Barrier-Free Health Care Initiative**

1 2 3 4 5 6 7 8 9 10

### File a Complaint

**Instructions for filing a complaint**

# ADA Resources Regarding Law Enforcement

## **AMERICANS WITH DISABILITIES ACT**

### **INFORMATION FOR LAW ENFORCEMENT**

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How do you interview a witness who is deaf? How do you assist a person who is having a seizure? How do you transport a suspect who uses a wheelchair? Under the Americans with Disabilities Act (ADA), people who have disabilities are entitled to the same services law enforcement provides to anyone else. They may not be excluded or segregated from services, be denied services, or otherwise be treated differently than other people. The following compliance assistance materials will help state and local law enforcement officers understand how to interact with victims, witnesses, suspects, and others who have disabilities.

[Publications](#) | [Police Response to People with Disabilities Video](#)

<https://www.ada.gov/policeinfo.htm>

# DOJ provides Technical Assistance

- Department of Justice ADA Information Line:
- 800 514-0301
- 800 514-0383 (TTY)

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