ADA and Corrections

Captain Tameka Hull, ADA Coordinator
Arlington County Sheriff’s Office
tchull@arlingtonva.us

Disclaimer
Expressed opinions and are those of the Speaker and do not necessarily reflect the views of the Arlington County Sheriff’s Office.

Americans with Disabilities Act of 1990

IT’S THE LAW.
Don’t resist, comply.
Objectives

• Review the definition of a disability
• Discuss the importance of an ADA Coordinator in jails.
• Discuss major life activities and limitations in a jail setting.
• Discuss modifying policies, practices and procedures to ensure full inclusion of inmates with disabilities
• Discuss direct threat and how it applies in a jail setting when making reasonable accommodations
• Identify reasonable accommodations in a jail setting as it relates to specific disabilities
• Discuss staff culture and acceptance
• Identify auxiliary aids provided in a jail setting
• Discuss reasonable accommodations to the public

Disabilities Among Prison and Jail Inmates 2011–2012, Bureau of Justice Statistics

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Definition of a Disability

“The definition of “disability” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.”

Definition of a Disability

“The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.”

Major Life Activities

• Caring for Oneself
• Performing Manual Tasks
• Seeing
• Hearing
• Eating
• Sleeping
• Walking
• Standing
• Lifting
• Bending
• Thinking
Major Life Activities

- Thinking
- Communicating
- Sitting
- Concentrating
- Breathing
- Learning

Under the ADAAA, “major life activities” is expanded to include “major bodily functions.”

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Brain
- Circulatory
- Cardiovascular systems

What does ADA say about Corrections?

“§ 35.152 Jails, detention and correctional facilities, and community correctional facilities states.

(a) General. This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities.”
§ 35.152 Jails, detention and correctional facilities, and community correctional facilities.

“Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, 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 public entity.”

What NOT to do:

• Shall not place inmates with disabilities in inappropriate classifications due to limited space or unavailable accommodations.
• Shall not place inmates with disabilities in medical areas unless actually receiving care
• Shall not put inmates with disabilities in other facilities that don’t have the same programs just because they have a disability
• Shall not deprive inmates with disabilities visitation with family members by putting them in distant housing

What if?

“What if?  Unless it is appropriate to make an exception.” §35.152 (b)(2)

• Safety and Security is not the exception. You must be able to articulate specifically and individually why there is an exception.
And……

A public entity shall make *reasonable modifications in policies, practices, or procedures* when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. (General Requirement)

What does Agency Policy Say?

- Corrections / Law Enforcement Environments are heavily policy and procedure / general orders driven.
- ADA adds the gray to the black and white environment
- Staff are trained to do exactly what policy says to do.
- You won’t be able to write policy in a way that will ensure every possible accommodation is spelled out to the letter.
- Creating “Special Directives” for each inmate receiving an accommodation will provide more guidance for staff.

- Accommodations and modifications to policy may make staff uncomfortable because they fear they are breaking the rules or giving away “extra” amenities and privileges.
- ADA Coordinator and Supervisors must take the time to explain that staff may have to take extra steps but the inmate with the disability is receiving equal benefits to services and programs.
Who’s Who?

- Inmates with Disabilities
- Inmate Workforce with Disabilities
- Employees or Contractors with Disabilities
- Citizens with Disabilities (tours, visitors, public access)
- Volunteers with Disabilities

One Size Does Not Fit All

- Conduct Individualized Assessments (Booking Staff, Case Management Medical) What specifically does the inmate need?
- Inmates might not know what they need until after they are housed and exposed to the operations of the facility.
- The same inmate with a disability with a prior accommodation may need a different accommodation depending on the day and the nature of their disability.
- No two inmates with disabilities are the same even though they may present the same. Accommodations and needs may vary.

You Don’t Get to Choose

- The individual with the disability is to be given “primary consideration” to the accommodation that is “effective” for them.
- What appears to be effective to you may actually be difficult for the individual with the disability.
Is “Direct Threat” Applicable?

- A “direct threat” is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.
- Direct Threat can’t be articulated based on another inmate with a disability’s incarceration. It must be assessed individually and specific to the nature and behavior of the inmate in question.
- DOCUMENT the decision making process along with the behaviors that the inmate demonstrated that is a risk to the health and safety of others.

Provide Auxiliary Aids and Services:

- Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYS), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- Qualified readers; taped texts; audio recordings; braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

Reasonable Accommodations in Corrections

- Qualified Interpreters for Deaf or Hard of Hearing Inmates during programs and appointments
- Electronic Magnifiers for Inmates with low vision allowed in their cell
- Mobility Devices (to include Inmate’s personal device, power or manual)
- Special shoes
- Hearing Amplifiers during TV viewing hours, visiting booths or classes
- Lower tier, Lower bunk cell assignments
- Additional mattresses
- Closed Captioning on TV’s
Reasonable Accommodations in Corrections

May include but are not limited to:

• Medical equipment related to catheters, diabetic monitoring, cleaning supplies
• Special diets
• Video Relay Service for Deaf Inmates
• Screen Reader Software for Blind Inmates
• Accessible restrooms and showers
• Transcription of videos that are show in the facility
• Audio handbooks
• Cart and Captioning for classes and programs

Reasonable Accommodations in Corrections

May include but are not limited to:

• Accessible transportation for outside medical appointments, furloughs and transfers
• Audio Books from the Local Library or outside vendor from family
• Visual Alert Pagers
• LCD Monitors with Programming and Housing Unit Announcements
• Turning lights on and off quickly to notify Deaf and Hard of Hearing Inmates of a particular facility operation. (meals or lockdown)
• Single Cell for inmates with Post Traumatic Stress Disorder or Traumatic Brain Injury
• Allowing additional time for Housing Unit Operations

The Unforeseen Accommodation Request

• You can prepare in advance for many accommodations.
• Your staff may be presented with an accommodation request that they have never seen provided before. THE ANSWER CAN'T BE AN AUTOMATIC NO.
• Train staff to always send the request to the ADA Coordinator and up the “chain of command.”
• The Agency Head should be making the final decision regarding an accommodation request.
Surcharges

Prohibited!

• “A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.”

Retaliation

Prohibited!

• “No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.”

Coercion

Prohibited!

• “No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.”
Self -Evaluation

• Is yours past-due?
  • “A public entity shall, 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.”
  • Written in 1990
  • Have you introduced new policies that need to be audited since your last self evaluation?

ADA Coordinator

• “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.”
  • Are employees aware of who the ADA Coordinator is?
  • Is your website up to date?

Notice to Inmates

• How are you providing Notice to inmates, their families and the public that your agency complies with the ADA? (handbook, signs, video, website, printed documents)
  • “An effective notice states the basics of what the ADA requires of the state or local government without being too lengthy, legalistic, or complicated. It should include the name and contact information of the ADA Coordinator.”
Grievance Procedures

• “Local governments with 50 or more employees are required to adopt and publish procedures for resolving grievances arising under Title II of the ADA. Grievance procedures set out a system for resolving complaints of disability discrimination in a prompt and fair manner.”
• Is your ADA Coordinator responding to and investigating ADA related complaints by inmates? (Color coded envelopes)
• How will the public access or be aware of your grievance procedures?

Training Staff

• An introduction of the ADA to the agency in a one time training is not enough
• New hire training, in-service training and refresher must be ongoing for all employees and volunteers, not just sworn staff (updates, videos, new rulings, technology changes)

Additional Information

• The ADA Coordinator is vital and key to ensuring “practices” are not discriminating against inmates with disabilities. Inspect what is expected.
• Instead of articulating why a particular accommodation will not work, first look at the ways that it can.
• Staff must take into consideration what “basic needs” look like to a person with a disability.
• Success is a team effort between all stakeholders (Security, Medical, Mental Health and the Inmate with a Disability)
GOAL OF THE ADA
Full inclusion of people with disabilities in *all aspects of society.* (does not exclude inmates in jails and prisons)

Questions?

Resources
ADA.gov (Regulation Guidelines)
BJS.gov