



Americans with Disabilities Act  
**Advancing Court Accessibility for  
Individuals with Disabilities**  
Comprehensive Guide

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## Guide Purpose

This comprehensive Guide arises from the critical importance of ensuring full access for court users with disabilities across diverse state and local court settings including civil, criminal, family law, juvenile and dependency, mental health and drug courts, and other court auxiliary programs and services. It systematically outlines the application of the Americans with Disabilities Act (ADA) requirements, with a strong focus on promoting ADA best practices, providing practical accommodation examples, referencing relevant court cases and U.S. Department of Justice settlements, raising awareness of the underlying concepts and disability constructs that steer engagement, fostering beneficial external relationships and partnerships, and offering a wealth of valuable resources. The central aim of this Guide is to empower court personnel to adeptly respond to a broad spectrum of court users with disabilities, spanning litigants, defendants, jurors, attorneys, witnesses, parents, children, juveniles, divorcees, practitioners, court spectators, and more, by creating methods of collective access where disability-related needs are acknowledged, embraced, and upheld with respect.

This Guide can also be utilized by court users with disabilities and those associated with them, such as family and friends, advocates, organizations that serve people with disabilities, social service professionals, justice-oriented organizations, and others to learn and understand how the ADA applies to the judicial system.

**Each Guide chapter is designed to stand alone or work together to support comprehensive training.**

## Acknowledgements

A very special thank you to the following people, whose generous time spent reviewing and providing expert feedback in the final stages of this Guide was invaluable in ensuring quality, coherence, and relevance.

**Judge David Whedbee**, a paraplegic and wheelchair user after a climbing accident, joined the King County Superior Court bench on September 16, 2019, in Seattle, Washington. Judge Whedbee has been assigned to civil, criminal, and family law rotations, in addition to handling protection order and involuntary commitment calendars. He is Co-Chair of the Diversity-Equity-Inclusion Committee. Judge Whedbee is also the Co-Chair of the Disability Justice Task Force created by the Supreme Court of Washington, which is tasked with studying barriers to court access and developing best practices for improving physical, digital, programmatic, and cultural accessibility for persons with disabilities. Before joining the bench, Judge Whedbee worked for 12 years as a civil rights lawyer. During this time, he was also a board member and cooperating attorney for the ACLU of Washington, and served as Washington's representative to the ACLU's National Board. After graduating from the University of Washington School of Law in 2004, Judge Whedbee served as a law clerk for U.S. District Court Judge Helen G. Berrigan in the Eastern District of Louisiana and Judge Ronald M. Gould in the U.S. Court of Appeals for the Ninth Circuit.

**Peggy Cadwell**, ADAC, is the Statewide ADA Title II Coordinator with the New Mexico Administrative Office of the Courts and brings 25 years of court experience with a focus on Language Access and the ADA. Ms. Cadwell was an integral part of the team that the Access to Justice Index recognized as the US's #1 Language Access Program. Ms. Cadwell is the first appointed Statewide Title II ADA Coordinator for the New Mexico Judiciary. She is responsible for creating and implementing standardized Title II ADA systems, training, and processes within the State Court System, including the New Mexico Supreme Court, the Court of Appeals, all 13 districts, magistrate, and Metropolitan courts. Through dedicated leadership and innovative solutions, Ms. Cadwell has successfully implemented a comprehensive ADA self-evaluation and transition project for the entire judiciary, enhancing operational efficiency and ensuring greater accessibility within the system. In addition, Ms. Cadwell spearheaded a highly impactful statewide scribing program for all self-represented individuals in the courts. By training all employees to effectively assist in scribing and developing specialized training for providing these services to individuals with disabilities, Ms. Cadwell has significantly improved access to justice, fostering an engaged and accessible court environment for all.

Sincere gratitude to **Elizabeth A. Garcia**, JD, who currently serves as the Chief Clerk for the New Mexico Supreme Court. Ms. Garcia previously held the esteemed positions of General Counsel for the New Mexico Second Judicial District Court and Court Executive Officer. It was over four years ago that Ms. Garcia's initial encouragement and insightful vision sparked the initiative of producing

this ADA Court Guide. Her initial pivotal suggestion has driven the development of this comprehensive Guide, aimed at making courts more accessible for individuals with disabilities. Ms. Garcia's contribution at the outset of this journey has been invaluable, and her visionary leadership has profoundly impacted the accessibility landscape within the court community.

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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](http://www.adata.org).

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The information herein is intended solely as informal guidance and is neither a determination of legal rights or responsibilities, nor binding on any agency with enforcement responsibility under the ADA or any other law.

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### ***Acknowledging Jurisdictional Differences in ADA Implementation***

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This Guide does not overlook that different state and local court jurisdictions across the United States operate under their own distinct legal frameworks, services, and resources. As previously mentioned in the *Purpose* section, this Guide systematically outlines the application of the Americans with Disabilities Act (ADA) requirements, raises awareness of the underlying concepts and disability constructs, and offers suggested practices to ensure accessibility for court users with disabilities across diverse court settings. Despite differences among individual courts, top-level leadership and commitment are essential in developing an environment where access is not only a requirement but is woven into the very fabric of daily operations. While specific implementations may vary, the overarching goal remains consistent: every court must comply with ADA mandates and create pathways to justice for individuals with disabilities in every aspect of the judicial process.

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### ***The Immense Need for Awareness and Training***

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#### **Accessibility and Disability Rights**

Disability is a natural part of the human experience, influencing us all at some point in our lives. The judiciary bears a substantial, unequivocal responsibility to safeguard, advance, and enforce access to justice for individuals with disabilities on an equal basis with other court users. Despite legal mandates, access to justice remains elusive for many persons with disabilities.<sup>1</sup>

People with disabilities continue to face attitudinal, legal, communication, physical, and economic barriers across the justice system. When courts fail to frame disability as an issue of **human rights** and instead rely on antiquated views that perpetuate inappropriate stigmas and discriminatory attitudes, court users with disabilities continue to experience severe and detrimental impacts on their lives and the lives of those in their personal circle of loved ones.

According to the World Institute on Disability's article [Moving From Disability Rights to Disability Justice](#), the justice system can make real strides by taking a comprehensive approach to secure the rights of people with disabilities.<sup>2</sup> This means not just within the system but also in how justice is served for them.

Adults and juveniles with disabilities come from diverse backgrounds and experiences regarding race, class, gender, age, immigration status, and other critical issues. However, "compared to people without disabilities, disabled people are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences once convicted."<sup>3</sup>

A poignant example of marginalization is found in the National Council on Disability's (NCD) publication [Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children](#).<sup>4</sup>

The report highlights that parents with disabilities consistently experience widespread discrimination in child custody and visitation disputes. They frequently encounter disparate treatment within the family law system, where courts generally have been inclined to not rule in favor of custody or visitation, absent proof of direct risk to the child's well-being. Attitudinal bias toward disability remains prevalent and legal, medical, and mental health professionals are not free from these biases. NCD asserts that parental assessments can inherently contain biases, with language found in unpublished court documents and evaluations reflecting negativity and a lack of cultural competence regarding disability. Examples include phrases like "afflicted with dwarfism," "wheelchair bound," and "suffers from physical disability."

The Office for Access to Justice, under the U.S. Department of Justice (DOJ), reports in their fact sheet, [Access to Justice is Disability Access](#),<sup>5</sup> that "Individuals with disabilities are disproportionately impacted by criminal and civil legal systems.

- The rate of violent crime against persons with disabilities is four times the rate for individuals without disabilities.
- In 2016, nearly 2 in 5 (38%) of individuals incarcerated in state and federal prisons reported having at least one disability.
- Several of the top ten most burdensome civil legal problems, including employment discrimination, access to healthcare, disputes over disability benefits and poor working conditions, disproportionately affect those with disabilities.
- Households with at least one member with a disability are almost twice as likely to hold medical debt than households without members with disabilities, making them more vulnerable to debt collection lawsuits.
- Adults with disabilities are twice as likely to experience poverty as nondisabled adults and often receive lower pay than their non-disabled counterparts. Therefore, they are less likely to be able to afford legal assistance and less able to bear legal costs, or other associated costs like traveling to court."<sup>6</sup>

In Addition, juveniles with disabilities are disproportionately impacted by the criminal justice system. The NCD's publication [Breaking the School-to-Prison Pipeline for Students with Disabilities](#) states that about 85 percent of incarcerated youth have a disability.<sup>7</sup> These youth with disabilities are a unique and particularly vulnerable group. 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.<sup>8</sup>

Courts must recognize that individuals with disabilities include jurors, attorneys, practitioners, court spectators, and many others. It is crucial for the courts to proactively fulfill their responsibilities by identifying and addressing the unique needs of these different types of court

users so they can fully participate in their respective roles within the court system without encountering hindrances or barriers. This entails not only acknowledging the presence of diverse abilities among court users, but also actively implementing measures to facilitate seamless access and participation for everyone involved in the legal system.

Disability is a term with subjective and evolving connotations shaped by historical and contemporary cultural attitudes. Recognizing the judiciary's **unintentional or deliberate failure to consider the full spectrum of human access needs and abilities as discriminatory**, there is an opportunity for those responsible for administering civil and criminal legal systems to develop the tools and training necessary to ensure accessibility for individuals with disabilities at every stage and aspect of all judicial activities.

Courts should consider the experiences of individuals with disabilities, update legal standards, provide innovative service delivery models and best practices, adopt modernized assistive technologies, and maintain research and data collection regarding the disparities experienced by people with disabilities within the justice system. Aligning with the ADA, the justice system can increase accessibility through the development of methods that go beyond traditional, non-disabled, and neurotypical norms. Embracing accessibility means not only acknowledging but also welcoming and respecting people's different needs within the justice system.

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### ***The Americans with Disabilities Act (ADA)***

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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 retaliation and coercion, and more.

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### ***Disability Civil Rights Apply to the Courts***

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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 the courts.

In [\*Lane v. Tennessee\*](#), 541 U.S. 509 (2004), the U.S. Supreme Court confirmed that Title II of the ADA, which prevents discrimination against disabled persons by public entities, constituted Congress's valid enforcement power under the Fourteenth Amendment. In *Lane*, George Lane and Beverly Jones, both wheelchair users, faced a lack of court access related to their disabilities. George Lane, facing criminal charges, encountered a courthouse building without an elevator. To reach his second-floor hearing, he had to crawl up multiple flights of stairs on hands and knees. When he returned to the courthouse, he refused to repeat the strenuous ascent and declined for safety reasons to be carried up by security personnel. He was then subsequently arrested and jailed for failure to appear. Beverly Jones, a certified court reporter, was unable to participate in hearings due to the lack of physical accessibility in the county courthouses. This barrier resulted in the loss of job opportunities and deprived her of the prospect to engage in the court process. Both Lane and Jones filed lawsuits against Tennessee, asserting that the state had violated Title II of the ADA by denying them access to the state judicial system based on their disability. In finding the law to be constitutional, the court in *Lane* specified that the purpose of Title II of the ADA is to uphold fundamental rights, including the right to access the court. The holding also extends beyond court proceedings, emphasizing that the right of access to the courts also encompasses the accessibility of judicial services.

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504 or 504) applies to state and local courts receiving federal funding, and programs or activities conducted therein, and essentially provides the same protections as the ADA.

Regarding disability discrimination claims against state courts, the [Understanding the ADA](#) blog by William D. Goren, J.D., LL.M., offers in-depth discussions in [A Pair of Related Doctrines and a Big Win for Persons with Disabilities](#),<sup>9</sup> [Suing a state court system: Shooting down the Defenses](#),<sup>10</sup> and [A shot across the bow to judges and court systems](#).<sup>11</sup>

### **Federal Courts**

Federal courts that are part of executive agencies are subject to Section 504, but not to the ADA. Federal courts that are housed in different branches of the federal government other than the executive are neither subject to the ADA nor are they subject to Section 504. They are only subject to the Administrative Office of the Courts rules. It should be stressed, however, that, per Judicial Conference policy, federal courts do provide reasonable accommodations to persons with communication disabilities. These guidelines are published in Volume I, Administrative Manual, Chapter III, General Management and Administration, Guide to Judiciary Policies and Procedures. These guidelines are reprinted on the National Association of the Deaf website at [NAD - Communication Access in Federal Courts](#).

### **Government-Funded Contractors**

Court contractors are obligated to carry out the government's ADA Title II and Section 504

obligations. Contractors, such as security, collection services, social services, interpreters, etc., whether they are on-site or off-site, must carry out the court's ADA/504 obligations, given that they act as an instrumentality of the court. It should be noted that the courts cannot contract away liability. If a contractor violates the ADA or Section 504, both the court and the contractor can be held accountable for the violation.

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### ***Who Are Court Users?***

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Any court user can have a disability resulting in the need for disability-related barrier removal to access the court activity. Court users can include:

- Attorneys
- Defendants (including incarcerated persons)
- Litigants (including self-represented parties)
- Victims
- Court User's Social Circle (such as family and friends)
- Married Couples
- Divorcees
- Parents
- Children/Juveniles
- Legal Guardians
- Personal Representatives (executor and administrator)
- Witnesses
- Jurors
- Expert Witnesses
- Various Practitioners such as Social Workers and Mental Health Professionals
- Advocates
- Legal Professionals such as Paralegals
- Intervenors
- Interpreters/Translators
- Probation Officers
- Law Enforcement Officers
- Media
- Researchers
- Volunteers
- Court Spectators
- General Public

Understanding the demographics of potential court users with disabilities is crucial. An estimated 1 in 4 U.S. adults (or 27%) have disabilities. Specifically, 12.1% of U.S. adults have mobility disabilities, 12.8% have cognitive disabilities, 7.2% have independent living disabilities, 6.1% are deaf or hard of hearing, and 4.8% are blind or have low vision. Additionally, more than 1 in 5 U.S. adults have a psychiatric related condition.<sup>12</sup>

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### ***Reasonable Accommodation: A Broad Court Term Encompassing ADA Requirements***

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It is important to note that the term “reasonable accommodation” is commonly used within the court system to broadly describe efforts to remove disability-related barriers. This includes actions such as:

- implementing reasonable modifications to policies, practices, and procedures,
- physical access, and
- providing effective communication.

Although “reasonable accommodation” is the preferred terminology, it encompasses a range of measures aimed at ensuring accessibility and compliance with the ADA and Section 504.

Court staff and judges should be familiar with the terminology of policy modification, physical access, and effective communication, as each aligns with specific regulations and requirements. While distinct, these components share the common goal of ensuring that programs, services, and activities are accessible to and usable by individuals with disabilities through program access.

**In this Guide, “reasonable accommodation” is used interchangeably with “modification of policy, practices and procedures,” “physical access,” and “effective communication.”**

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### ***ADA Protection: Who is Covered and Documentation Guidelines***

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Ensuring that the court is complying with the ADA begins with the knowledge of which court users 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. See 28 C.F.R. § 35.108.

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 a substantially limiting 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 entities discriminatory actions are motivated by the individual's relationship or association with a person who has a disability. Note that a person who is associated with an individual with a disability is not entitled to a court accommodation under the ADA unless they themselves have a disability as defined under the ADA. In that case, the accommodation must directly relate to their disability.

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

### **Determining a Substantial Limitation in Performing a Major Life Activity**

An impairment does not need to prevent or severely restrict a major life activity to be considered substantially limiting. An individualized assessment is required to determine whether an impairment substantially limits a major life activity. This determination must be made without considering the ameliorative effects of mitigating measures, such as medication or hearing aids, with the exception of ordinary eyeglasses or contact lenses. The negative effects of mitigating measures, such as medication, may be considered when determining if an impairment substantially limits a major life activity.

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. See [Hamilton v. Westchester County](#), 3 F.4th 86 (2d Cir. 2021) (ruling 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 and joining the 1st, 4th, and 7th U.S. Circuit Courts of Appeals in holding that disabilities lasting or expected to last less than six months can be a covered disability).

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

**Impairments that virtually always constitute a disability include:**

- Deafness and hard of hearing
- Blindness and low vision
- Missing limbs and mobility impairments
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- HIV
- Multiple sclerosis
- Addictions
- Hypertension
- Intellectual disabilities
- Autism
- Traumatic brain injury
- Mood disorders (e.g., major depression, bipolar disorder)
- Post-traumatic stress disorder
- Obsessive compulsive disorder
- Schizophrenia

### **ADA Definition of Disability Is Different from Other Laws**

Because the law has a legal definition, the ADA definition of disability is different from how disability is defined under some other laws, such as for Social Security disability-related benefits or the Individual with Disabilities Education Act (IDEA). An individual can be covered under more than one law.

### **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 law. For instance, a court defendant who is Deaf and 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.

This **exclusion does not apply** to an individual who has a history of being an addict and is no longer using. For an addict who is no longer using, they would be covered as having a **record of such an impairment**. Yet the ADA applies differently to addiction to alcohol as compared to addiction to illegal drugs. 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.

Conditions that are **both temporary and minor**, such as influenza or seasonal allergies, and that have little or no long-term impact, would not constitute a disability under the ADA.

### **Gender Identity**

The ADA does not protect people based only on their gender identity, but it does cover disabilities that could be related to it, such as gender dysphoria. See [Doe v. Massachusetts Department of Corrections](#), 17-12255-RGS (D. Mass. June 14, 2018). See also [Williams v. Kincaid](#), 45 F.4th 759 (4<sup>th</sup> Cir. 2022). See also [DOJ ADA Statement of Interest](#) explaining that gender dysphoria can be a covered disability under the ADA.<sup>13</sup>

For more information on the definition of disability under the ADA go to: [Questions and Answers about the Department of Justice’s Final Rule Implementing the ADA Amendments Act of 2008](#).<sup>14</sup>

### **Determining Who Is Covered**

Disabilities can include chronic illness, various physical disabilities (including hearing and visual impairments), psychiatric conditions, autism, intellectual/developmental disabilities (I/DD), etc. Individuals can have co-occurring conditions such as a person who has I/DD and a psychiatric disability.

The Title II regulations do not directly address inquiries concerning disability. However, the DOJ's [ADA Title II Technical Assistance Manual](#) states that a public entity should not make "unnecessary inquiries" concerning disability (II-3.5300).<sup>15</sup> Turning this around, the policy means that "necessary" inquiries are permitted. Each court is responsible for determining what information is "necessary" as it relates to the specific activity. See 28 CFR § 35.108(d)(1)(vii) (2016) ("Nothing in this paragraph (d)(1) is intended. . . to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.").

When determining the need for disability documentation in a specific court activity, the focus should begin by understanding the underlying reasons. In alignment with the DOJ policy, one should be mindful of documentation requirements that could be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA. Disability documentation, even if it entails needing to know just a little more about a person's disability, should be based on good faith efforts in trying to remove barriers or to determine eligibility.

### **Good Faith Efforts to Obtain Information**

To actively demonstrate good faith efforts in collecting essential information the following should be considered:

- **Nature of Relationship:** Is the relationship between the individual with a disability and the court activity long-term or a brief encounter?
- **Establishing Nexus:** Can the connection between the disability, the requested accommodation, and the court activity be established?
- **Barrier Removal Solutions:** What efforts are being made to identify the disability-related barriers in order to find effective solutions?
- **Determining Eligibility:** Is the involvement of a disability necessary to determine eligibility?
- **Non-Obvious Disabilities:** If the disability is not obvious, is there a compelling, objective reason to determine if the person is covered under the ADA?
- **Documentation Requirements:** What reasonable documentation should be sought to help identify the functional limitations related to addressing and removing the disability-related barriers at hand?
- **Overall Focus on Access:** Emphasis should be on the core objective of a good faith effort to create access for court users with disabilities.

### **Poor Historians**

Court staff and judges should keep in mind that some courts users with disabilities can be poor historians. They 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 (TBI).

### **Identifying I/DD Court Users**

The Arc's National Center on Criminal Justice and Disability (NCCJD) focuses on the challenges of identifying potential disabilities within the Intellectual and Developmental Disabilities population. Individuals in this group often encounter prejudice, a lack of understanding, and limited resources when involved in the justice system, including the courts. Insufficient knowledge about I/DD may result in the misidentification of disabilities, an increased risk of false confessions, incorrect assumptions about competency and credibility, and the inadvertent waiver of rights by the individual. To address these issues, court staff can proactively seek training and technical assistance through the NCCJD's [Pathways to Justice](#) program or the local [Arc Chapter](#). Refer to the chapter *Extensive Resources* within this Guide for additional information.

The responsibility for acquiring medical documentation should be determined by the court, considering the ability of court users to obtain and pay for such information. The acquired information should be treated with the highest level of **confidentiality** as it is applicable and appropriate and shared only to the extent necessary to remove barriers to participation or determine eligibility.

### **Obtaining Documentation to Ensure a Fair and Balanced Legal Process**

It should be noted that there can be circumstances where a disability-related barrier removal could unduly affect other parties involved. A good example is a divorcee seeking numerous continuances in arbitration due to autism. The court may consider how the accommodation affects other involved parties, such as increased legal fees, delays in property division, or delays in child custody arrangements. Documentation could provide a basis for these evaluations, involving the verification of the disability and establishing the nexus between the court activity as it relates to the disability and the requested accommodation. With proper documentation, the court can explore other solutions that may remove disability-related barriers for the individual while minimizing the impact on the other party. By seeking appropriate documentation in these scenarios, the court ensures that accommodations are justified and balanced against the potential consequences for all parties involved.

In these cases, disability and medical confidentiality would be addressed within the rules and procedures of the proceedings, such as hearing in camera, non-disclosure orders, sealing records of the proceedings, exclusion from official case records, and other steps as the court deems appropriate. However, the **court should also be wary** of requiring submission of disability-related documentation as evidence in the underlying proceeding where it may be relevant only to the need for an accommodation in the divorce proceeding. Where disability issues have no bearing on issues to be decided in the divorce itself, and requiring a litigant with the disability to divulge

confidential information may invite prejudice, the court may want to delegate the administrative task of determining an accommodation to another judge or ADA coordinator.

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### *Qualified Individual with a Disability*

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The person must be a qualified individual with a disability to participate in a program, activity, or service of the court. 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, communication, or transportation barriers. Qualified court users with disabilities should have access to all programs, services, activities, and privileges to which they would otherwise be entitled, whether mandatory or voluntary.

#### **Eligibility Qualification Examples**

An offender, who is a wheelchair user, is eligible for an anger management program and is mandated to attend. This program is scheduled in the evenings, but the individual relies on accessible public buses for transportation, which do not operate during those hours. Furthermore, the program venue presents physical access challenges at the entrance and lacks accessible public bathrooms. This scenario highlights how program requirements, such as timing and physical accessibility, can disproportionately affect individuals with disabilities, potentially hindering their ability to participate in the program and comply with court orders. The court must then consider how to make this program accessible to the offender by addressing the removal of architectural and transportation barriers.

Jury eligibility requirements include the ability to understand testimony and evidence, follow the law as explained by the judge, and deliberate with fellow jurors to make impartial decisions based on the facts presented to determine whether the accused is guilty in a criminal case, or a defendant is liable in a civil case. If a potential juror has a traumatic brain injury that limits their ability to concentrate on a task for more than 45 minutes at a time, the court should explore possible accommodations to help the individual focus on the trial and deliberation for longer periods. If no effective accommodation can be made or if the accommodation will fundamentally alter the trial process, the person may not be qualified to serve as a juror and might be excused due to a medical hardship. By contrast, for a juror with low vision or blindness, the court should consider the evidence likely to be produced at trial and determine whether that juror, with aid of a document reader or merely listening to the testimony, might be able to assess the evidence as effectively as other jurors. By engaging in the interactive process and considering the nature of any limitations defined by the juror in relation to their disability, the Court may be able to seat a juror with a disability instead of assuming that juror is disqualified due to a medical condition/hardship.

A court spectator, who is the son of a defendant on trial, has autism and exhibits stemming behaviors of rocking back and forth, humming, and finger-snapping, which are highly disruptive to the trial. To accommodate him, the court provides a separate quiet room where he can watch the trial via video stream. This accommodation allows him to be a qualified individual to witness the trial without causing disruptions.

### **Qualified and Avoiding Discrimination**

It is imperative to be keenly aware of **avoiding unfounded concerns, misconceptions, and stigma** regarding people with disabilities such as intellectual, developmental, psychiatric, or traumatic brain injuries. Having these types of disabilities does not automatically disqualify a person from serving as a witness, spectator, juror, or participating in other activities. Courts should conduct an individualized inquiry to determine whether an individual is qualified, with, if needed, reasonable modifications to rules, policies, practices, and/or with the removal of architectural, communications, or transportation barriers.

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### ***Designated Person Who Ensures Compliance***

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Courts must appoint one or more designated persons who have the **authority**, as well as the ability and expertise to navigate the court system, to ensure compliance with Section 504 and the ADA, as amended, including ensuring the investigation of complaints on behalf of court users. The ADA/504 coordinator's primary responsibility is to safeguard civil rights and prevent ADA violations in both the courtroom and the court's administration of programs and auxiliary services.

The Chief Judge, Court Executive Officer, or another authority designates a trained and qualified individual, typically identified as the ADA or 504 Coordinator, to oversee compliance efforts. This individual should have sufficient time, availability, and consistency to fulfill the role effectively. They should be well-versed in the court's legal responsibilities, have access to necessary resources, and be easily accessible. Strong communication skills are essential to engage effectively with court users, judges, jury managers, bailiffs, clerks and other court staff, legal professionals, and the public. The coordinator should also regularly collaborate with staff responsible for ADA compliance to address issues, including reducing unnecessary administrative demands on already busy court personnel involving accommodation requests.

The ADA/504 Coordinator should hold a prominent role within court administration, allowing them to establish strong working relationships with judges and quasi-judicial officers. When judges determine reasonable accommodations under court rules or judicial discretion, the coordinator should, where needed, facilitate communication and information exchange with the judge. This includes conveying accommodation needs and requests, offering insights based on expertise and experience, and assisting with logistical tasks such as gathering information, implementing, and

monitoring accommodations. Additionally, the coordinator should guide court users through the accommodation request process as it applies to judicial proceedings.

It is advisable to have at least a **secondary ADA/504 coordinator** available to step in for the primary coordinator when necessary. This ensures that ADA-related issues, which may require immediate attention, can be addressed promptly, even when unexpected.

The institution must maintain formalized documentation of its ADA compliance efforts, which can be coordinated, tracked, and completed by the ADA/504 coordinator(s) and designated staff. Proper documentation should detail how program access is or is not provided to court users with disabilities, including the process used to resolve ADA issues and requests. This comprehensive approach serves to demonstrate good faith efforts to create equal opportunities.

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. See 28 C.F.R. § 35.107. This information should be easily accessible to the public in a variety of ways. A best practice could include setting up an email address designated solely for ADA matters.

### **The Richness of Resources and Relationships**

A best practice for the ADA/504 coordinator involves cultivating relationships and tapping into the expertise of advocacy groups, nonprofit organizations, government agencies, and other entities with relevant knowledge and experience. This also involves engaging with individuals with various disabilities who can share both positive and negative experiences related to disability barriers encountered in the court system.

The richness of extensive resources and relationships can greatly help with the accommodation determination process for court users with all types of disability-related needs to ensure the removal of barriers. 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 offer targeted training for court staff and contractors, addressing the unique considerations associated with specific types of disabilities that may intersect with the judicial system.

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 to support the mission of the law to ensure equality of opportunity and full participation for individuals with disabilities. The Southwest ADA Center is part of the ADA National Network, with whom the author is affiliated. All guidance and training to individual entities is confidential. To find your regional ADA Center go to [www.adata.org](http://www.adata.org) or call 1-800-949-4232.

Examples of local and state community resources with which 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 Agencies for Developmental Disabilities](#)
- State Brain Injury Advisory Council
- State Assistive Technology Program ([ATAP](#) and [AT Act Programs](#))
- State Schools for the Blind and Deaf
- [The National Arc/Arc Local Chapters](#), including [Pathways to Justice](#)
- [University Centers for Excellence in Developmental Disabilities](#)
- [National Disability Rights Network](#)

### **Advisory Committee**

It is worthy to note that these endeavors can lead to creating or updating the court's evaluation and transition plans regarding the ADA regulation under 28 C.F.R. § 35.105 ("A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments."). An ADA advisory committee could facilitate engagement and ensure comprehensive input from community stakeholders. This approach will produce knowledgeable and various perspectives that can contribute to developing effective policies and approaches to ensure the access rights of individuals with disabilities.

### **The Necessity of Comprehensive Training**

The ADA/504 coordinator plays a crucial role in leading the implementation of comprehensive ADA training for everyone involved in court operations, including judicial officers, court clerks, bailiffs, jury managers, other court staff, security personnel, volunteers, and contractors. This training should cover ADA requirements as well as other court-related needs of persons with different kinds of disabilities. By equipping these individuals with necessary knowledge and skills, they can effectively work with the ADA/504 coordinator to identify potential disability-related barriers and access solutions in compliance with the law. They also are then aware of and can refer to the court's:

- ADA Evaluation and Transition Plans (including existing accessibility features),

- ADA Policies and Procedures / Access Protocols, and
- ADA Effective Communication Policies and Procedures.

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### ***ADA Notice of Rights / Grievance Process***

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#### **ADA Notice of Rights**

Notice of Rights must be widely publicized to the public. This includes providing a means of effective communication, such as alternative formats, to inform individuals who have disabilities which directly impact their communication (Deaf, blind, I/DD, etc.). These rights should be widely and clearly publicized via the website (homepage or obvious link), social media, in pamphlets and other printed materials, posted in obvious areas such as the court entrance, included in the court's *ADA Request Form*, and more. The notice should either include the ADA grievance process or how to obtain these procedures.

#### **Incarcerated Court Users and ADA Notice of Rights**

The court's ADA Notice of Rights should also be publicized to court users who are incarcerated, and in a manner that ensures they have the opportunity to access and understand the information. The notice should be posted in the court's secure temporary central and courtroom holding areas, where individuals who are in custody and awaiting hearings or trials, or are witnesses, are located. These notices should also be placed in the secure walkways and tunnels leading to the court's secure areas and at the sally port where in-custody individuals are brought in and processed.

It is recommended that the ADA/504 coordinator collaborate with the court's liaison officer, who facilitates communication between the court and correctional facilities. Together, they should establish working relationships with the ADA/504 coordinators of the jails and prisons within the court's jurisdiction. This collaboration aims to ensure that incarcerated defendants with disabilities are informed about their ADA rights within the court system. Additionally, it should provide these defendants with the opportunity to request court reasonable accommodations and participate in the interactive process, if needed, before any proceedings or other court activities take place.

It is crucial to emphasize that the court has the same obligation to provide a means of effective communication, such as alternative formats, regarding notification of ADA rights to incarcerated court users who have disabilities that impact their communication.

#### **Contractors and ADA Notice of Rights**

This responsibility extends to all contractors offering programs and services ordered by and on behalf of the court, such as family counseling, mediation, alternative dispute resolution (ADR), psychological assessments, safe driving classes, etc. It is imperative for these contractors to incorporate in their publicized ADA Notice of Rights the court's designated contact responsible for handling ADA/504 grievances.

### **ADA Grievance Process**

Courts must establish and implement ADA complaint grievance procedures to address disability-related complaints by court users, providing for **prompt** and **equitable** resolutions. See 28 C.F.R. § 35.107.

### **Filing a Complaint**

The ADA requires a grievance process for court users who believe they have been discriminated against on the basis of disability. This notification and procedure should be included on the court's website but should also be available through additional means for filing complaints. The notification of a grievance procedure should be presented in a manner that is easily noticeable and obtainable. As with the Notice of Rights, this includes providing a means of effective communication, such as alternative formats, to inform individuals with disabilities that directly impact their communication (Deaf, blind, I/DD, etc.).

**Incarcerated court users** who believe they have been discriminated against on the basis of disability in their court activity have the right to file an ADA grievance. The court should ensure an accessible avenue for these individuals to file an ADA grievance, especially because these persons may not have the same means of access as the public to file a complaint. The court holds the responsibility to effectively communicate the grievance process to incarcerated court users who have disabilities affecting their communication.

Court users can choose to utilize the court's grievance process and/or file with DOJ or bring a private lawsuit. Incarcerated court users with disabilities can use the court's ADA grievance procedure, but the Prison Litigation Reform Act may come into play when filing a private lawsuit.

### **Third Party Complaint**

A third party, such as a family member or an advocate of a court user, has the right to file a complaint if they are aware of and believe that the individual has faced discrimination based on disability by the court. The court's grievance process should explicitly outline this procedure, acknowledging the ability of a third party to submit a complaint on behalf of the disabled court user.

### **Who Should Be Involved in the Grievance Process?**

Courts may maintain various procedures for designating who receives ADA complaints, who decides resolution, and who should be involved in the appeal. Options may include the ADA/504 coordinator, the court CEO, a staff attorney, or the chief judge, while bearing in mind possible conflicts of interests. For example, if the ADA/504 coordinator approves accommodations, they may be deemed ineligible to handle the formal grievance resolution. Careful consideration of potential conflicts ensures an unbiased and fair resolution process.

**Important to note:** If a judge or quasi-judicial officer in a pending proceeding denies an accommodation request, the denial may only be reviewed through the regular process of judicial review. Given that the judicial process is central, a court administrator (such as the ADA/504 coordinator or another administrative party) cannot review a judge's or quasi-judicial officer's decision. These accommodation requests involve the judicial balancing of the rights of the parties or the judge or quasi-judicial officer's inherent power to manage the courtroom and the proceeding, with the understanding that all judicial proceedings are subject to the ADA nondiscrimination requirements. Thus, even when judges or quasi-judicial officers decide on accommodations, they must consider and comply with the ADA to avoid discrimination.

All court staff involved in the grievance process must have a thorough understanding of Title II of the ADA, the ability to address complaints promptly and fairly, and possess adequate authority to achieve resolutions within the broader context of the justice structure, considering constitutional and procedural aspects.

### **What Could Grievances Be About?**

Issues could include:

- effective communication (i.e., websites, sign language interpreters, or alternative formats),
- modification of policy/procedures,
- 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 within the justice system. To prevent lasting harm the ADA requires the complaint process to provide a prompt and equitable resolution. For example, 15-day window increments in the procedure to respond and process a complaint may be too long depending on the particular court activity. The appeal procedure should accommodate the complainant, where it can be easily and quickly “moved up” the ladder of authority to resolve the issue.

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

For more information and template examples see the DOJ’s ADA Best Practices Tool Kit for State and Local Governments, [ADA Coordinator, Notice and Grievance Procedure: Administrative Requirements Under Title II of the ADA](#).<sup>16</sup>

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### ***Policy and Procedures Equals Access***

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The court 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 through the ADA requirements of policy/procedure modification, effective communication, and physical access in all aspects of the court.

To ensure equal opportunities for participation in court programs, services, and activities, the court should establish clear policies and procedures outlining how court users can request disability-related barrier removal. The process for granting, providing, or denying requests should be straightforward and easy to follow.

ADA procedures should be widely advertised and clearly explain how to make a request. Utilizing an *ADA Request Form* can be particularly helpful in identifying a court user's limitations in relation to the specific barriers they may encounter when accessing a particular court activity. It should explain the various methods by which access can be achieved through the accommodations of policy modification, effective communication, and physical access. The form should make it clear that the court user does not need to propose specific solutions, though any they have for removing disability-related barriers are welcome. The form should clarify that an interactive process, defined as an informal, flexible conversation with the court user, may be necessary to determine the most appropriate and effective way to create access. Additionally, it should outline what the court user can expect after submitting their request.

It is essential that the *ADA Request Form* strikes a balance, ensuring it is neither too complex nor too simple to capture the needed information without causing confusion. Individuals with

disabilities possess unparalleled expertise in their own accessibility needs. Court staff and judges should therefore defer to how the individual frames any need for accommodations. The person's own experience in overcoming barriers should be the primary consideration when adapting court activities for this individual.

Third parties, such as family members, social workers, the court user's lawyer, advocates, or other people, can request an accommodation on behalf of an individual with a disability. However, it is essential for the court to include the individual in the interactive process as much as possible to ensure their needs and preferences are directly considered. A **reasonable connection must exist** between the individual with a disability and the third party making the request, guaranteeing the appropriateness and relevance of the relationship. The overall intent is to facilitate the request process ensuring that the individual with a disability can participate to the fullest extent of their ability and that requests made on their behalf are legitimate and pertinent.

ADA procedures should aim to eliminate unnecessary levels of review where suitable. Public-facing employees should be trained to assist people with different disabilities when straightforward, impromptu requests occur, such as escorting a person who is blind to their court activity location or providing records in alternative formats per the person's format preference. For example, if an individual who is blind asks for location assistance, the court employee should ask how they can best assist. The individual may request to take hold of the employee's elbow or place their hand on the employee's shoulder to be led as the employee describes the navigation of the route.

ADA regulations require public entities to ensure that court users are able to obtain information as to the existence and location of accessible services, activities, facilities, and equipment. See 28 C.F.R. § 35.163; see also 28 C.F.R. § 35.106. This information should be widely disseminated and can be shared through various platforms such as websites, social media, public notices, bulletin boards, pamphlets, press releases, and more.

Access requests can be made at any time, as individuals may not be aware of possible barriers until they arise. The timing of the request, depending on the court activity, can affect what the court is able to provide. Also, court personnel, such as judges, bailiffs, court clerks, family court staff, or self-help staff, may become aware of and identify barriers while court activities are in progress, which then must be addressed.

If accommodations are requested through alternative channels like email, phone calls, or in-person, instead of the designated ADA accommodation form, they are valid and warrant a response even where the court user doesn't follow a prescribed policy. In such cases, a best practice approach entails collaborating with the requester to complete the *ADA Request Form*, which facilitates the interactive process, ensuring a thorough understanding and response to the request.

## **ADA Systematic Process**

It is a best practice to establish a logical, straightforward, and consistent practice. The interactive process can play a part in this procedure.

- Is the individual covered by the ADA?
- What does the activity involve?
- How do the person's disability-related symptoms/manifestations interact with the way the activity is currently carried out?
- As a result, what are the particular barriers that are created?
- What barrier removal solutions as they pertain to policy modification, effective communication, and/or physical barrier removal can be implemented?
- Periodic follow-up to ensure the access effectiveness.

In some circumstances, it may be necessary to consult with and/or bring in a knowledgeable third party to join the interactive process to find solutions. Also, court staff and judges should always defer to the court user's description of their disability and how it might impact or limit access to court and services.

Given the nature of how the court and their auxiliary programs operate, barrier removal should be provided in as prompt a manner as possible and monitored to ensure effectiveness during the activity. This includes establishing procedures to enable staff to easily access disability-related assistive technology/devices and facilitating their use by court users in a variety of court situations.

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### ***Limitation on State and Local Government Obligations***

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The court is not required to provide program access if it would fundamentally alter the nature of a program or result in an undue financial and administrative burden. A fundamental alteration is a change that is so significant that it alters the essential nature of the court activity or facility.

## **Weighing Civil Rights vs. Undue Burden – Will Justice Be Served?**

In weighing the claim of undue burden, the court must, among other factors, consider if the lack of disability-related access would result in significant detrimental harm to the individual. If an undue burden defense is being considered, the court should carefully assess the adverse impact that would occur to the court user with a disability if the accommodation(s) is not granted.

For instance, if a defendant, who is on the autism spectrum, is restricted to being accompanied solely by their defense attorney during the judicial proceeding without any allowance for a trusted support person as an accommodation, the defendant may struggle to understand what is happening, become overwhelmed, and experience heightened anxiety without the support person

present. This could result in interruptions, outbursts, or difficulty following courtroom etiquette, ultimately impacting the trial's efficiency, and potentially influencing the sentencing outcome.

Another example illustrates a parent with a traumatic brain injury seeking primary custody of their children. Despite the parent's request for modification of the parental assessment tests as an accommodation due to their condition, family services refuse, citing the standardized nature of the tests. Consequently, instead of accurately assessing the parent's competency, the test results only reflect the parent's disability. The lack of accommodation leads to the loss of child custody, undermining the parent's rights and the welfare of the children involved.

Under 28 C.F.R. § 35.150(a)(3), the court must prove 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 thoroughly document all good faith efforts if the claim has to be made.

However, even where this high burden is met, the court must nevertheless **do what it can** up to the point of fundamental alteration or undue burden to create access.

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### *Direct Threat*

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Direct Threat under 28 C.F.R. § 35.139 is defined as a significant risk to the health or safety of others that cannot be eliminated by:

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

While courts are required to provide reasonable accommodations to individuals with disabilities, they are also permitted to consider direct threats posed by a court user's disability which must be objectively determined. Any conclusion of a direct threat must be based on objective evidence, current medical knowledge, and a thorough assessment of the specific circumstances regarding the particular court activity in question. It cannot be based on stereotypes or assumptions about the individual's disability.

The determination must be made on a case-by-case basis, considering the following factors:

- Duration of the risk;
- Nature and severity of the potential harm;

- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

If a true direct threat exists, courts must explore accommodations that would address safety concerns while still allowing the individual with a disability to access court services and participate in the court activity to the fullest extent possible.

### **Examples of Direct Threat**

A court user involved in divorce proceedings struggles with controlling emotions and frustrations due to a traumatic brain injury. This individual has exhibited episodes of losing their temper and has made threatening comments to court staff on several occasions while in the courthouse. As an accommodation to mitigate the direct threat, the court requires the individual to be accompanied by a security officer to enter and navigate the courthouse. The court has clearly communicated to the individual the reasons behind the security personnel's presence, emphasizing that this accommodation allows them courthouse access and ensures everyone's safety. The security officer accompanying this court user is trained to approach the situation with sensitivity and understanding of the individual's disability and is equipped to handle any potential escalations.

A court user has a serious contagious illness that can be spread through airborne transmission. Due to the individual's pulmonary-related disability, they are unable to wear a mask. As an accommodation to mitigate the direct threat, the court allows all involvement in court activities via the court's virtual platform.

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### ***Integrated Settings Priority***

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Integrated settings allow people with disabilities to interact with people without disabilities to the fullest extent possible. The courts must serve court users with disabilities in the most integrated setting with others. Programs can have specialized services for people with disabilities but cannot require participation in those programs in lieu of the regular program.

For instance, the court provides free monthly community legal assistance clinics to individuals facing legal issues who may otherwise have no access to the legal system. Every other month the court offers these clinics specifically tailored to individuals with cognitive-related disabilities. This event also includes social workers who assist participants in navigating not only the legal system but also other interconnected systems, such as Adult Protective Services. The court must ensure that while providing this specialized service to individuals with cognitive disabilities, the general clinic remains accessible to them.

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### ***Program Access***

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As previously acknowledged, the varied court systems across the United States each operate under their own distinct legal frameworks, services, and resources. Nonetheless, regardless of these differences, all state and local courts are subject to the ADA and must provide program access in the overall administration of justice within the legal system.

Ensuring access to justice for individuals with disabilities necessitates the elimination of disability-related barriers that may hinder equal opportunity for unimpeded access to judicial proceedings, services, and programs. This endeavor aims to guarantee an equitable resolution on the merits of their legal matter, spanning across both criminal and civil issues.

Program access means that the court, when **viewed in its entirety, must be readily accessible to and usable by court users with disabilities**. This includes all activities, programs, and services that extend not only to activities directly conducted within the court but also external programs and services outside the court that are ordered by the court.

Program accessibility may be achieved under various methods with integration priority. These methods include:

- modification of policy, practices, and procedures,
- effective communication, and
- architectural access.

#### **Self-Evaluation and Transition Plans**

Given that the ADA became law in 1990, the deadlines for self-evaluation and transition plans under 28 C.F.R. § 35.105 and 28 C.F.R. § 35.150 have long passed. Although the 2010 revised regulations do not specifically require a new self-evaluation or transition plan, it is crucial to complete one if it was never done or if the existing plan needs updating. How can the court meet present compliance obligations without assessing its current accessible status and identifying necessary steps to comply with the law? Conducting an evaluation assessment, developing a compliance plan, and following through may demonstrate a good faith effort to create program access.

The evaluation should address discriminatory policies and practices, the absence of auxiliary aids and services needed for effective communication, and the identification of inaccessible facilities. Once noncompliance areas are identified, the transition plan should outline the steps with timelines to achieve full accessibility for individuals with disabilities. Involving individuals with disabilities and the organizations representing them in the self-evaluation process is essential.

Periodic updates to the self-evaluation and transition plans should also be made to ensure continuing compliance.

### **All Court Activities Must Provide Program Access**

The justice system is vast and can be seen as overwhelming and complicated. The list below illustrates that although different kinds of courts handle various matters, each court must ensure program access. Depending on the jurisdiction, court programs can include but are not limited to the following:

**Civil:** The legal venue where disputes between individuals, businesses, or state or local government, often regarding matters such as contracts, property, personal injury, medical malpractice, landlord tenant relations, property rights, taxes, and more, are adjudicated and resolved through legal proceedings overseen by a judge or a jury trial.

**Criminal:** The legal forum for handling cases involving alleged violations of criminal law, which includes arraignment, preliminary hearings, jury and bench trials, sentencing, post-conviction matters, and victim services. Judges oversee judicial proceedings, ensuring adherence to legal standards and safeguarding defendants' rights throughout the legal process.

**Magistrate/Municipal:** This court handles a variety of legal matters at the local level, depending on their jurisdiction. They may handle minor criminal offenses, civil cases involving small claims, landlord-tenant disputes, eviction proceedings, contract disputes, traffic violations, probate and estates, protective orders, and more.

**Jury Division:** This division is responsible, in conjunction with judges, for managing and overseeing all aspects of the jury selection process and jury trials.

**Juvenile/Children:** A specialized court that handles cases involving minors, including delinquency proceedings, dependency and neglect proceedings, termination of parental rights, adoptions, guardianships, youth services and rehabilitation, and education and prevention programs.

**Family:** These courts handle a wide variety of cases involving domestic matters, such as adoptions, name changes, marriage dissolution, child custody matters, and domestic violence protection orders, with the ability to provide resources and interventions to both victims and perpetrators.

**Community:** These courts focus on addressing low-level, quality-of-life offenses in specific neighborhoods or communities, often through restorative justice practices.

**Probation and Pretrial:** Court offered programs and services to supervise individuals on probation or awaiting trial, providing support, monitoring, and rehabilitation services.

**Alternative Dispute Resolution (ADR):** These programs offer methods such as mediation and arbitration to resolve disputes outside of traditional courtroom litigation.

**Court Technology Tools:** This technology provides interactive digital platforms and applications available to the public to enable individuals to effectively manage their legal matters with ease and efficiency.

**Court Self-Help Center:** Depending on the particular court, these centers offer assistance to court users who represent themselves by providing general non-legal information on court processes, requirements, and procedures, as well as assistance with numerous legal forms. They also maintain community and legal resource lists to help court users find additional assistance. By helping litigants understand legal processes, file proper documents, and prepare for hearings, these centers can play a crucial role in assisting individuals to navigate their legal matters.

**Customer Service Division:** This program assists the public by managing various administrative tasks, which can include providing court case information and assistance, processing payments for fines, fees, and other court-related expenses, offering guidance with bond and bail matters, handling civil filings, endorsing pleadings, maintaining records, assisting with sentencing orders and court dates, providing information about approved community service agencies, assisting individuals with community service requirements, and addressing public inquiries over the phone.

### **Associated Special Services**

These services include assisted outpatient treatment programs, court clinic, elderly disability initiatives, foreclosure settlement programs, and youth and family counseling.

### **Therapeutic Justice/ Diversionary/ Problem Solving Courts**

Traditional court processes are not necessarily designed to address the underlying social and psychological issues inherent in some criminal cases and civil cases related to divorce, custody disputes, domestic violence, child abuse and neglect, juvenile delinquency, addiction, mental health, and other multi-faceted issues. In addressing these, the court seeks to address root causes rather than allowing the underlying problems to repeat as new legal cases. To this end, courts are experimenting with innovative programs that focus on specific populations such as people who have drug and alcohol addictions or psychiatric conditions, or who are veterans with recurring criminal law violations. These courts operate within a network of service communities, and their programs stress a collaborative, multidisciplinary, and problem-solving approach. While some of these courts adopt a pre-adjudicatory and diversion-oriented stance, others necessitate a plea before implementing a treatment plan.

These court diversion programs prioritize service coordination as a core aspect of their operation. This begins early in the intervention process to assess eligibility for programs and the necessity of timely, specialized services. It is paramount that this integrative treatment approach, which

involves both judicial case processing and community services, be **fully accessible** to individuals with various types of disabilities. Considerations for disability-related access should be integrated from the outset of project development, which includes incorporating these strategies for court collaboration with service communities.

Adopting the tenet of "**nothing about us without us**," it is imperative to involve people with disabilities and local/state community services that provide services to these individuals in the project's development. These stakeholders should play an active role and be represented at all stages of the project's implementation. This involvement could extend to participation in ongoing committees of stakeholders relevant to all entities engaged in the service recovery network. Refer to the chapter *Designated Person Who Ensures Compliance/The Richness of Resources and Relationships* within this Guide for further guidance.

**Court-ordered services** must **ensure program access** for court users with disabilities, and the social service network involved in these programs should also be mindful of their ADA obligations to address accessibility barriers within their own programs.

The DOJ, Office of Justice Programs, Bureau of Justice Assistance's November 2002 Program Brief [Strategies for Court Collaboration With Service Communities](#)<sup>17</sup> addresses the development of these innovative programs. The Brief does not specifically address the issue of disability; however, this inclusion is consistent within the Brief's promising components of an effective service coordination strategy.

### **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 courts, 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**.

### **Implicit Bias in the Justice System**

Implicit bias is the attitudes or stereotypes that influence perceptions, decisions, and actions toward certain groups without conscious awareness. These biases develop over time through societal influences, personal experiences, and cultural norms, often without individuals being aware of them. Unlike explicit biases, which are conscious and intentional, implicit biases operate

automatically and can affect actions in ways that may not align with a person's stated beliefs or values.

The National Center for State Courts (NCSC) is an independent, nonprofit organization dedicated to promoting the rule of law and improving the administration of justice. It provides authoritative knowledge and expertise to address current and emerging issues in state court administration. The NCSC publication, [The Evolving Science on Implicit Bias: An Updated Resource for the State Court Community](#)<sup>18</sup>, explores systemic biases, including those related to disability, and offers insights for court leaders and practitioners on addressing these challenges.

Despite efforts by court professionals to recognize their own personal implicit bias, the deeply entrenched societal construct of ableism continues to perpetuate disparities for justice-impacted individuals with disabilities. These disparities could contribute to grave consequences, such as incarceration<sup>19</sup> and disparate treatment in child custody cases.<sup>20</sup>

A poignant example of how implicit bias influences the justice system is discussed in the American Medical Association Journal of Ethics article [Sanism and the Law](#).<sup>21</sup> The author, through the premise of deconstructing society's fears and apprehensions about people with psychiatric disabilities, asserts that the existence of sanism, which is the **irrational prejudice** against people with psychiatric disabilities, can marginalize people no less than racism or homophobia. The prejudice stems from historical and present widespread societal mythology and assumptions that portray people with psychiatric disabilities as emotionally unstable, unpredictable and perpetually more dangerous than people without these disabilities.

As with all other types of ableism, sanism can be seen, and ideally addressed, through awareness and adoption of statistically significant social science data that dispel the embedded cultural presuppositions that prejudice persons with psychiatric disabilities. This work is necessary to ensure the justice system recognizes its own marginalization of people with disabilities, including those with psychiatric, intellectual, developmental, and neurodivergent disabilities.

### **Perspective Leads to Meaningful Program Access**

Policies and practices can account for the differences in each individual's starting point when pursuing a goal and should remove barriers to equal opportunity by providing support based on the unique needs of the individual. Court staff and judges should listen to people with disabilities and how they articulate meaningful access to them.

It is a best practice for courts to **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 court users with disabilities.

Courts should 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 court users.

### **Justice Index and Illustrative Policies**

The National Center for Access to Justice (NCAJ) at Fordham Law School [mission](#) is to “bring rigorous, principled research and analysis to the task of advancing progress toward a fairer justice system and a more just society.” NCAJ has identified laws and practices that entitle people to rely on the legal system for access to justice.

The NCAJ [Justice Index](#)<sup>22</sup> is a research-based, data-driven online ranking system. It ranks all 50 states, the District of Columbia, and Puerto Rico on the extent to which they have implemented certain best policies for access to justice, including those addressing court users with disabilities. The Justice Index is the result of extensive research using multiple [methodological](#) approaches. This includes developing a survey instrument and inviting court administrators and state access-to-justice commission staff from all 50 states to respond, helping to identify the presence of benchmarked policies for state justice system officials.

Among the six index components, the [Disability Access Index](#)<sup>23</sup> highlights policies that, if adopted, can enhance the fairness of the legal system. These recommended policies are divided into the following categories: design/planning, training/support, service delivery, and communication of court services. Many of the policies align with ADA Title II requirements, such as effective communication, policy modification, and architectural access. The example policies also include maintaining up-to-date ADA evaluation and transition plans.

### **Note on Jury Duty and People with Disabilities**

The National Center for State Court’s (NCSC) publication [Jurors With Disabilities](#)<sup>24</sup> covers ADA requirements and practical information regarding including people with disabilities in the jury process. The NCSC states in the chapter *Hidden and Unintended Barriers to Jury Service*<sup>25</sup> the importance of awareness that people with disabilities may or may not have a driver’s license or state-issued I.D. and may not have registered to vote due to reasons of being disenfranchised.

To improve accessibility for prospective jurors with disabilities, states should amend statutes to allow service affidavit forms to be completed and submitted in locations beyond the courthouse. Courts should ensure these forms are widely available at places frequented by people with disabilities, such as community centers, disability organizations, and medical facilities, and offer them in alternative formats like large print. Clear, simple instructions should accompany the forms, detailing the completion and submission process, accommodating various literacy levels, and explaining how to request disability-related accommodations.

Also noted in the NCSC publication, the jury selection process can also be inherently discriminatory based on the belief that disability should warrant heightened scrutiny, or by assuming a medical or other condition is cause to disqualify a juror instead of a disability that could be reasonably accommodated. Court staff and judges should be vigilant about subtle forms of ingrained disability-negative perceptions leading to discrimination, automatically excluding individuals with disabilities even before they are able to report for jury duty or disqualifying jurors without engaging in a meaningful interactive process during voir dire.

### **Discriminatory Examples in Jury Selection**

Consider the case of a quadriplegic individual who receives a jury summons. When this juror contacts the court and discloses their disability to inquire about potential physical barriers, court staff informs the juror they will be excused from jury duty due to their “medical condition,” instead of fielding a request for an accommodation to fulfill their civic duty.

A juror discloses in voir dire that they have Crohn’s Disease and may need to use the bathroom more often. Instead of asking the juror privately how frequent the breaks would be and explaining the court already will be required to take periodic breaks, the judge assumes the juror cannot manage their condition, with or without an additional break.

### **Jury Summons Notification**

Include in the jury summons notification the court’s ADA Notice of Rights and how to request an accommodation. This ensures that individuals with disabilities are aware of their rights and can request the necessary accommodations to fully participate in the jury process.

### **Excluding a Juror**

If a potential juror is excluded through peremptory challenges due to disability there must be a clear nexus between the disability and how it would significantly hinder their ability to perform juror duties, with no reasonable accommodation available that will address the disability-related barriers. See [\*U.S. v. Watson\*](#), 483 F.3d 828 (D.C. Cir. 2007).

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## ***Ensuring Access to Digital Information***

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Access to digital information and materials to court users with disabilities is just as important as other kinds of access. Digital access such as computers, tablets, touchpads, kiosks, and websites can be an inaccessibility issue for people with all types of disabilities including those related to learning, vision, hearing, and mobility. Access can be created by a wide variety of assistive technology such as:

- **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 enter text and use commands.
- **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 Self-Service Kiosks and Computers**

Kiosks and computers can provide access to a host of information for court users. Information such as marriage licensing, permits, payment of fines and fees, document printing and scanner, notary oath, form fill, and more.

### **Considerations When Making Kiosks Accessible**

Kiosks should have features and peripherals for ADA compliance and kiosk software options to create full access for court users with various disabilities. 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 2010 ADA Standards for Accessible Design-707.6.3., U.S. Department Justice (2010), if there are function keys.

The court 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
- text-to-speech capability with Braille instructions to turn on speech output.

### **DOJ Final Rule: Accessible Websites and Mobile Applications**

The Department has consistently maintained that the ADA requirements apply to all services, programs, and activities of state and local governments, including those offered online.

Inaccessible features and content cause unnecessary barriers for people with disabilities to access what the website and mobile devices have to offer. Therefore, it is crucial that the court's web content and mobile applications (designed for smartphones and tablets) be accessible to individuals with various disabilities to ensure effective communication.

On April 8, 2024, the Attorney General signed the ADA [Final Rule](#),<sup>26</sup> enhancing web and mobile application accessibility for people with disabilities. This rule adopts the Web Content Accessibility Guidelines (WCAG) 2.1, published in June 2018, as the technical standard for accessibility under Title II. It clarifies how state and local governments can fulfill their existing ADA obligations. For more information, see the DOJ's publications of [State and Local Governments: First Steps Toward Complying with the Americans with Disabilities Act Title II Web and Mobile Application Accessibility Rule](#)<sup>27</sup> and [Accessibility of Web Content and Mobile Apps Provided by State and Local Government Entities: A Small Entity Compliance Guide](#)<sup>28</sup>

The [U.S. Access Board](#) provides more information and guidance at 1-202-272-0080 ext. 3 and [ta@access-board.gov](mailto:ta@access-board.gov). The Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards.

See also [G3ict's Inclusive Courts Checklist](#)<sup>29</sup> which includes 10 core capabilities that courts should develop to support a digital transformation that is accessible. G3ict's mission is to build a global community to advance the fundamental human rights of persons with disabilities to digital access.

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## ***Architectural and Transportation Access***

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### **Architectural Access**

Accessible judicial facilities are crucial to ensuring that individuals with disabilities are afforded due process and have equal opportunity to participate in court activities. Not all courthouse common areas must be physically accessible, and structural changes need not be implemented where other methods are effective for court users with mobility disabilities. Minor accommodations such as adding a cup dispenser to an inaccessible water fountain or relocating hearings to provide closer

proximity to accessible restrooms could be considered. However, in most cases, the only way to ensure full integration through equal access is to remove physical barriers. This may include enlarging a doorway or installing a ramp to enter the building or a jury box or jury suite. Additionally, communication barriers may need to be removed such as installing flashing fire alarms for those who cannot hear. Other spaces and elements such as parking lots, entrances, counters, evacuation routes, bathrooms, courtrooms, attorney-defendant meeting rooms, witness stands, spectator seating, special counsel stations, and inmate holding areas should be assessed for accessibility. All physical access changes should be included in the facility's ADA updated and ongoing evaluation and transition plans, including conducting an architectural audit, which is essential to determine whether a facility is ADA compliant.

It is important to understand that when architectural barriers impede the court user's ability to navigate an area of the courthouse, it can emphasize an individual's disability in a negative manner and risk self-exclusion. Makeshift accommodations can also lead to negative perceptions, which can alienate court users such as witnesses and attorneys with disabilities, who should not be stigmatized or treated like second-class citizens. When barriers exist, an undue focus on the disability can occur instead of directed attention to the activity being performed. When dignified access is guaranteed, the focus remains on the court activity, such as the judicial proceeding and the substance of the case.

**For example, in the courtroom setting:**

**Preventing compromise and disruption of the activity itself:** Without proper physical access, individuals may struggle to perform their roles effectively. For instance, if lines of sight or communication are blocked, or if movement is restricted, it can hinder the ability of court users to carry out their designated responsibilities, disrupting the court's smooth functioning.

**Maintaining the dignity, credibility, and independence of the court user:** Access ensures that all individuals involved in the court process can participate fully and with dignity. It ensures that their credibility isn't undermined by physical barriers that the court user must struggle with. For instance, a juror who is a wheelchair user, due to an inaccessible jury box, must continually enter from the back of the courtroom and come through the gallery, passing spectators and the defendant, and then taking a position close to the defendant. Clearly this not only singles the juror out but also places them in a position where they may feel uncomfortable or scrutinized, but can also take attention away from their role in the judicial proceeding. The system fails to provide the basic respect that should be afforded to this juror.

The cost of accessible changes to existing courthouses can often be significantly decreased by planning ahead and focusing on possible low-cost options that provide effective access through modifications and creating barrier-free areas. One simple example could be to install a removable chair in the jury box for jurors who are wheelchair users. By having an ADA updated and ongoing

evaluation and transition plans, courts can avoid situations where it is apparent that someone's disability is the reason why ad hoc arrangements were made.

Note that courthouses eligible for or listed in the **National Registry of Historic Buildings** are not exempt from the program access requirements and must still provide physical access to people with disabilities. See 28 C.F.R. § 35.150. See also [Matthews v. Jefferson](#), 29 F. Supp. 2d 525 (W.D. Ark. 1998).

### **New Construction and Renovations**

Court facilities should be in compliance with the DOJ's [2010 ADA Standards for Accessible Design](#)<sup>30</sup> if new construction and renovations were done starting March 15, 2012. Note **Section 231 Judicial Facilities** of the 2010 ADA Standards. New construction and alterations from 1992 to 2012 should be in compliance with the DOJ's [1991 ADA Standards for Accessible Design](#).<sup>31</sup> The [Architectural Barriers Act \(ABA\)](#)<sup>32</sup> 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.

Examples of settlement agreements between the DOJ and various jurisdictions aimed at improving physical access to court facilities are:

- [Settlement Agreement between the U.S. and Kootenai Cty., Idaho \(2017\)](#)
- [Settlement Agreement between the U.S. and Oconee Cty., South Carolina \(2010\)](#)
- [Settlement Agreement between the U.S. and the City of Eastpointe, MI and the Eastpoint Building Authority \(2007\)](#)

### **For More Extensive Information**

[Justice for All: Designing Accessible Courthouses](#),<sup>33</sup> prepared by the Courthouse Access Advisory Committee for the U.S. Access Board, has useful information on ways to facilitate and increase accessibility of judicial facilities. The publication includes excellent examples of accessible courthouse design.

[Accessible Courthouses \(A Refresher\)](#)<sup>34</sup> archived webinar, which is a collaboration between the ADA National Network and the U.S. Access Board, covers requirements in the ADA and ABA Accessibility Standards for courthouses and courtrooms including reviewing provisions in the standards for secured entrances, judges' benches, jury boxes, witness stands, clerk and bailiff stations, spectator seating, holding cells, and other courthouse spaces and elements.

Also utilize technical assistance from the [U.S. Access Board](#).

### **Transportation Access**

Courts may provide or arrange transportation for court users such as witnesses, jurors, and victims. It is important to note that standard transport practices can be **dangerous** for individuals with

mobility disabilities as they 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 people who use manual or power wheelchairs might require minor modifications to existing cars or vans, or the use of 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. The entity providing the transportation should be trained in all the components of accessible transportation, including how to use lift equipment, properly transferring and securing the person in the vehicle, and properly securing mobility equipment.

Contact your regional ADA Center ([www.adata.org](http://wwwadata.org)) to learn of guidance resources involving accessible and safe transportation procedures. Also utilize technical assistance from the [U.S. Access Board](#).

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### *Reasonable Modification of Policies, Practices, and Procedures*

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A participation barrier may be created for persons with disabilities because of a steadfast rule or policy, including how court activities are carried out. The court must make reasonable modifications in policies, practices, rules, and procedures in all court activities when necessary to avoid disability discrimination.

#### **Making a Modification Request**

As previously stated in this Guide's chapter *Policies and Procedures Equal Access*, the *ADA Request Form* affords the opportunity to make an accommodation request. Again, it is vital to emphasize that specific ADA wording is not required to make the request and that people with disabilities know about their own disabilities and any related limitations. Court staff and judges should therefore defer to how an individual frames any need for an accommodation.

Courts are obligated to provide a modification within a reasonable period after a request is made. What constitutes a reasonable time will depend on the court activity and specifics of the request and should be handled on a case-by-case basis.

#### **Administrative vs. Judicial Decision-Making on Modification Requests in Court Proceedings**

The term "judicial proceeding" refers to any legal process or hearings that takes place before a judge or quasi-judicial officer, encompassing a wide range of activities from formal court trials to administrative hearings and some types of arbitration.

Whenever possible, requested accommodations related to a judicial proceeding should be handled through the ADA administrative process, allowing staff involved in ADA compliance to work out the

accommodation informally as per the court's ADA-compliant policies and procedures. An example would be if a judge is hearing multiple cases in a day, the case of a person who needs a later time due to a disability can be scheduled accordingly. The ADA/504 coordinator should, as a matter of ADA procedure, keep the presiding judge and other essential court staff informed of any requests, the accommodation process, and the resulting granted accommodations.

It is important to note that requests related to effective communication or physical barrier removal such as the need for auxiliary aids and services for a Deaf individual or providing a temporary ramp leading from the jury box to the jury deliberation room for a juror who is a wheelchair user should usually be administrative requests. Refer to the chapters *Architectural and Transportation Access* and *Effective Communication* within this Guide for additional information.

Judges must also be prepared to handle modification requests that arise in a judicial proceeding where the request involves the judicial balancing of the rights and interests of the parties involved and/or impacts the judge's managing of the courtroom and proceedings. In these instances, the request will be determined by the presiding judge, following court procedural or evidentiary rules and exercising judicial discretion. Judicial discretion refers to a judge's power to make decisions based on their individualized evaluation, guided by principles of law including ADA requirements.

Examples of such accommodations include changing proceeding schedules, extending hearings, or determining who can be present in the courtroom. In these cases, as previously delineated in this Guide's chapter *Designated Person Who Ensures Compliance*, the ADA/504 coordinator can play a crucial role in facilitating these types of accommodations when they have working relationships with judges and quasi-judicial officers.

Court users may at times discuss their concerns about their proceedings, including disclosing a medical condition or a disability to court staff such as clerks or bailiffs. When this occurs, staff should promptly inform the ADA/504 coordinator. The coordinator can then initiate the interactive process with the court user to determine if an accommodation request has been made and communicate any relevant ADA-related information to the presiding judge, avoiding the disclosure of unrelated details that could constitute ex parte communication.

As with the court's administrative ADA procedures in ensuring compliance with the ADA, when judges or quasi-judicial officers decide what accommodations should be provided, they must consider and comply with the ADA to avoid discrimination. If the accommodation request is denied, the judge would then need to consider what can be done to ensure disability-related barrier removal where needed. Denials must also be in writing.

### **Timing of Requests**

A modification request can be made at any time since the individual may not be aware of potential barriers until they encounter them. The contextual nature of the accommodation request

(including both the nature of the disability and type of accommodation requested), together with the particular judicial proceeding or other court activity at issue, and the timing of when the request is made will all factor into the question of whether a reasonable accommodation can be provided and, if so, the type of accommodation given. For example, in a judicial proceeding, where an accommodation request might be made soon before a hearing or during the hearing, that timing factor can inform the decision whether to grant the request or deny it because of an undue burden or fundamental alteration. Of course, a request for reasonable accommodation must be made prior to the conclusion of the judicial proceeding. To help court users understand how the timing of their request, depending on the court activity, can affect the accommodation process, the *ADA Request Form* can include this information.

### **Interactive Process Regarding Modification Requests**

When a change in the usual way of conducting activities is requested, it is particularly important for court staff and judges to engage in an interactive process to determine the appropriateness of the request. This process helps identify potential disability-related barriers and reasonable accommodations specific to the court activity in question. This process can be an informal and flexible conversation which may need to be ongoing. During this dialogue, court staff and judges must ensure the court user is fully informed as possible about what to expect regarding their particular court activity. This process facilitates understanding of **what disability-related barrier(s) the individual might face** and **how best to remove the barrier(s)**. Both parties should work together to determine effective accommodations. Solutions granted by the court should empower the individual to participate fully in the activity to the greatest extent possible.

Court staff and judges should keep in mind that legal, courtroom, and court auxiliary programs and services can be complex and difficult to understand for people with disabilities, just as they can be for those without disabilities. Individuals may be reluctant to disclose their disability or how it affects their understanding of the information being presented. To address this, courts should acknowledge that their activities can be complicated and ask individuals how the information can be explained in different ways to make it easier to understand. Using simple, easily understood language can be helpful to all court users and especially beneficial for court users with cognitive disabilities.

### **If You Know That You Know, You Know**

When court staff or a judge is aware or should reasonably be aware that a person has a disability and faces barriers that impede access, it is crucial to initiate the interactive process. This involves identifying these barriers and finding solutions, even if the individual hasn't formally requested a modification. A good practice by the ADA/504 coordinator would be to offer assistance in completing the *ADA Request Form*, thus initiating the process of addressing any issues the court user may identify with the court activity. It is essential to recognize that individuals might not

always explicitly state their needs, but their struggle should prompt awareness that the court activity may need to be made accessible.

Disability barriers can arise in any court setting. Whether it involves a proceeding or an auxiliary program, judges and court staff should proactively address these barriers, ideally with the involvement of the ADA/504 coordinator on some level. These situations highlight the importance of training all public-facing staff in ADA Title II requirements, ensuring they can appropriately respond to such instances.

### **Consequence of Not Participating in the Interactive Process**

If a court user refuses to participate in or obstructs the interactive process, they risk undermining their complaint or case. If the court fails to engage in the interactive process when needed, it may be found at fault by the DOJ or held liable in a lawsuit. The key is to demonstrate a good faith effort to identify and implement an effective accommodation.

### **Refusal of a Modification of Policy, Practice, or Procedure**

A court user has the right to decline an accommodation, even if it effectively removes disability-related barriers. However, refusing an accommodation could result in barriers to participation. It is advisable to engage in the interactive process to understand possible legitimate reasons for refusal. This may lead to exploring alternative accommodation options or addressing concerns the court user may have about a particular accommodation. If a court user is provided with an accommodation but doesn't consistently use it, it doesn't necessarily mean the accommodation is not needed. The decision to use the accommodation should stem from the individual's judgment regarding their specific circumstances and situations.

### **Weighing Civil Rights for Access to Justice vs. Fundamental Alteration of Policy and Procedures**

Requests to modify standard court practices can pose challenges for court staff and judges, especially when determining if a requested change would fundamentally alter the court activity. This requires thoughtful, case-by-case evaluation of how accommodations impact individual court users with disabilities, balancing the removal of barriers with maintaining the integrity of the court activity. For example, the judge can consider the litigant's right to access the legal process without prejudicing their substantive case when deciding how to handle requests for accommodations. If a fundamental alteration claim is made, the court bears the formal burden of justification and must provide modifications to the extent that no fundamental alteration occurs.

Policies and procedures fundamental alteration analysis with each court user could entail:

- Questioning the purpose of the rule, policy, or procedure;
- Examining potential outcomes if the rule, policy, or procedure is modified or suspended;
- Considering the implications for other rules, policies, or procedures;

- Accounting for the capacity to address barrier removal;
- Assessing how the absence of disability-related access may cause harm to the individual and/or others; and
- Determining measures to ensure that access to justice is upheld.

#### **Policy Modification Examples**

- Permission for court users to bring their cell phones or other smart devices into the courthouse, under specified restricted use conditions, if the device is needed to monitor medical conditions such as diabetes.
- Assistance with completing court and auxiliary services paperwork for individuals with cognitive disabilities.
- An exception allowing individuals with diabetes, who need to eat frequently to control glucose levels, to have food in the courtroom.
- Flexibility for a later start time for court or other court-related activities if medications make it difficult to arrive early.
- More frequent breaks are provided for individuals with various disabilities during a judicial proceeding or a parent custody assessment.
- The ability to check in with a trusted support person present during the court activity for those with cognitive or psychiatric disabilities.
- Allowing a juror to wear sunglasses due to low vision with extreme light sensitivity.
- Assistance with organizing papers, taking notes, and facilitating access to publicly available official proceeding recordings through transcripts for individuals with learning disabilities.
- Arrangement of a smaller, quieter, or closed courtroom for individuals with auditory processing disabilities.
- Allowing a juror access to their personal care attendant upon request, with explicit instructions, guidelines, and limitations for all parties involved, to ensure that the juror's access needs are met while also maintaining the integrity and fairness of the jury process.
- Options for court users with post-traumatic stress to take part in court activities in a way that doesn't expose them to potential stress triggers.
- Permission for a trusted person to sit at the counsel table and assist with notetaking.
- Offering the choice of virtual, in-person, or a combination of both for court appearances and court auxiliary programs.

- Allowing a juror to wear house slippers or no shoes because they cannot wear street shoes due to having swollen feet from congestive heart failure.
- The court's ADA/504 coordinator provides the defendant with autism the accommodation of enlisting an autism expert to guide them through the judicial process. Additionally, the expert, when appropriate, is invited to provide information to the judge, defense attorney, and prosecutor about the defendant's disability and to explore possible ways to make the proceedings accessible.
- Scheduling court proceedings at certain times to coincide with medication requirements or effects for a court user with a psychiatric disability.
- Allowing videotaped testimony or the use of video conferencing technology in lieu of a personal appearance for a witness with I/DD.
- Conducting a remote proceeding in a case to accommodate the person with mobility issues.
- Setting up a partition between two divorcing Deaf court users to prevent each party from viewing the sign language communication between their ex-spouse and their legal representation.
- Changing the venue of the court appearance to a physically accessible location for an individual who is a wheelchair user.

### **Review of Current Policies, Procedures, and Practices**

Policies and practices should be reviewed to ensure they are nondiscriminatory, even if they appear straightforward or simple. A recommended approach is to establish a **policy explicitly stating that policies, practices, and procedures can be modified to afford disability-related access.**

### **Developing Alternative Access Policies and Procedures**

An additional practice could be implementing alternative access policies that clearly outline how specific procedures will be modified to create equal opportunities for court users with disabilities. These policies can provide consistent guidance, making them particularly valuable for onboarding new staff and contractors.

### **Examples of alternative access policies:**

**Self-Help Center** - If an individual court user with a disability encounters inaccessible court forms, making it difficult or impossible for them to fill out independently, the court will ensure immediate assistance, rather than mandating that all forms must be completed independently by the court user. To ensure equal access for the court user, the Center will utilize qualified, unbiased court staff and/or vetted trained volunteers to read and/or fill out forms as dictated by the court user or implement other alternative accessibility measures in form completion.

The Center will provide documents in alternative formats, including electronic formats, based on the needs of the requester. Documents can be provided electronically in text format (.txt) or Microsoft Rich Text Format (.rtf) unless a specific file format is requested.

Note the wording of the policy should not make the court user's disability the problem, instead, it should indicate that the form is the problem because, as the form is currently offered, it is inaccessible to some individuals with disabilities. The importance of framing the policy in a way that shifts the focus to the form's inaccessibility issues, rather than on the individual's disability, helps avoid stigmatizing individuals with disabilities. Instead, it highlights the need to address the accessibility of the form itself.

**Family Clinic** - Child custody interviews, assessments, and testing procedures conducted under the authority of the court will be carefully modified to address any accessibility barriers as it pertains to the parent's disability. Modifications should ensure that the activity reflects a true and accurate assessment of the parent's individual ability to adequately care for their children. In addition, interviews and assessments of children with disabilities should be fully accessible.

**Note** that the wording does not frame the court user's disability as the problem. Instead, it indicates that assessment activities can be inherently discriminatory in their design, merely reflecting the disability rather than measuring parental ability. Therefore, the activity must be modified to ensure nondiscrimination.

**Prohibition of Cell Phones and Smart Devices** – The courthouse prohibits the use of cell phones and other smart devices within its premises. However, the court recognizes that it is now a common reality that there are numerous disability/medical related mobile apps that create vital access and even lifesaving mitigation measures for people with vision, hearing, physical, or intellectual disabilities. If a member of the public declares upon entry that they require their cell phone/smart device due to reliance on an app for mitigating their disability or medical condition, they will be permitted to bring it into the building. Security personnel will inform the visitor of the prohibitions against using the smart device such as taking pictures or recording a judicial proceeding, explaining the consequences of violating this rule.

**Note** the policy should be worded to emphasize the accommodation of individuals with disabilities, ensuring equal access, rather than portraying their disability as an obstacle.

### **Opioid Use Disorder and Court Orders and Policies**

The DOJ guidance [The ADA and Opioid Use Disorder: Combating Discrimination Against People in Treatment or Recovery](#) states: "The opioid crisis poses an extraordinary challenge to communities throughout our country. The Department of Justice (the Department) has responded with a comprehensive approach prioritizing prevention, enforcement, and treatment. This includes enforcing the Americans with Disabilities Act (ADA), which prohibits discrimination against people

in recovery from opioid use disorder (OUD) who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their OUD (...) People with OUD typically have a disability because they have a drug addiction that substantially limits one or more of their major life activities.”<sup>35</sup>

As cited above, the publication makes clear that “Under the ADA, an individual’s use of prescribed medication, such as that used to treat OUD, is not an “illegal use of drugs” if the individual uses the medication under the supervision of a licensed health care professional, including primary care or other non-specialty providers. This includes medications for opioid use disorder (MOUD) or medication assisted treatment (MAT). MOUD is the use of one of three medications (methadone, buprenorphine, or naltrexone) approved by the Food and Drug Administration (FDA) for treatment of OUD. MAT refers to treatment of OUD and certain other substance use disorders by combining counseling and behavioral therapies with the use of FDA-approved medications.”<sup>36</sup>

The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA has extensively outlined the widely acknowledged consensus within medical and scientific circles regarding the indispensable role of these medications in effectively treating numerous individuals with OUD. The duration of OUD medication treatment is customized to suit each patient's requirements, and in certain instances, treatment may extend throughout their lifetime. Refer to the chapter *Extensive Resources/Disability Resources and Networks for Knowledge and Assistance* within this Guide for additional information.

The DOJ has determined that court orders and policies prohibiting or restricting the use of these medications to treat OUD for individuals under court supervision violate Title II of the ADA. Such actions result in discrimination against those with OUD, including the denial of benefits from services, programs, and activities through applying unnecessary eligibility criteria that tend to screen out individuals or classes of individuals with disabilities.

Given the pervasive nature of OUD, particularly within the realm of criminal justice systems, the following are DOJ settlements that address discriminatory policies regarding the lawful prescription of medication for OUD treatment among individuals within court supervision programs:

- [Settlement Agreement between the U.S. and The Unified Judicial System of Pennsylvania \(2024\)](#)
- [Settlement Agreement between the U.S. and the Massachusetts Trial Court \(2022\)](#)

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### *Personal Services and Devices*

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Personal services and devices are generally not required to be provided to court users as accommodations. These services and devices can include individually prescribed devices, such as eyeglasses or hearing aids, or services of a personal nature, such as hiring a personal attendant for a court user, or for staff to assist a court user with using the bathroom. In cases where an accommodation request for a mobility device, such as a segway (refer to the chapter *Mobility Devices/Other Power-Driven Mobility Devices* within this Guide for additional information), could legitimately be denied for security reasons, the facility must make efforts to provide access. This may include providing a court-owned wheelchair that is designed for ease of use and maneuverability.

#### **But What About Scenario**

General community inaccessibility and oppression can bleed into the courts, affecting access to justice.

A person with a severe disability must testify to the abuse they have suffered at the hands of a family member, who also serves as their personal service assistant (PSA). This individual lives in poverty and lacks accessible transportation and the means to afford a PSA to accompany them. Additionally, due to their circumstances, the victim lacks access to a computer, let alone the internet.

This individual undeniably deserves justice, yet they face disability-related barriers that may hinder their full participation in the judicial system. The challenge for the court's ADA/504 coordinator is to empower and support the individual by ensuring that they can pursue justice. As mentioned earlier in this Guide, this is where the richness of resources and relationships can play a crucial role. The ADA/504 coordinator can coordinate services to empower and support the individual to testify and engage in any other court activities related to their case. A court accommodation may involve scheduling the court appearance to coincide with the availability of the needed community services.

If the court is unable to utilize outside resources, then it should consider modifying its policies to provide the necessary services to empower and support the individual to participate in their case to obtain justice.

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### *Effective Communication*

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The court must provide court users who have communication-related disabilities effective means, through the accommodations of auxiliary aids and services, to receive and understand information, communicate with others, and fully participate in all relevant aspects of court activities. Providing effective communication for people with disabilities should be considered a standard expectation

and an integral part of all activities, services, and programs, and reflected in policies and procedures.

Individuals who may need effective communication could include people who are Deaf, deaf-blind, hard of hearing, blind or have low vision, as well as those who have speech-related or intellectual and/or developmental disabilities. Additionally, certain individuals with psychiatric disabilities may also require some means of effective communication.

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 public-facing staff, contractors, and any others who have interactions with the individual within the court system. It extends to all communication that is routine and non-routine, formal or informal, oral, written, or other means. In situations such as where a jail has a video hookup with the courthouse, both entities are responsible for providing effective communication, such as a qualified sign language interpreter, given that the hearing is held via this video system.

### **Financial Responsibility**

The institution assumes full financial responsibility for the provision of any auxiliary aids or services. Reasonable and fully refundable deposits for the use of auxiliary aids are permitted in some limited circumstances. For instance, this could apply to tours to the public of historical buildings, including a courthouse.

### **Auxiliary Aids and Services**

The court should be equipped with a wide range of auxiliary aids and services, as applicable to the various court activities, which can include:

- qualified sign language interpreters and readers,
- video remote interpreting (VRI),
- real-time transcription (CART),
- assistive listening systems compatible with current hearing aid technology,
- alternate formats (e.g., large print, flash drive, Braille or tactile displays),
- audio recording,
- screen magnification,
- handheld reading scanners,

- note takers,
- screen reader software,
- speech input software,
- speech generating devices,
- electronic reading/writing pads,
- written materials,
- telephone handset amplifiers,
- captioned telephones,
- telephones compatible with hearing aids,
- videophones,
- text telephones (TTYs) and relay services,
- captioning of audiovisual materials,
- two-way text-based communication apps or devices (e.g., Ubiduo),
- accessible web sites, and
- other accessible voice, text, and video-based telecommunications products and systems.

To ensure effective communication, court users should have the opportunity to use their personal assistive devices, such as augmentative and alternative communication devices. This type of technology can offer high-tech and low-tech options that help people with disabilities affecting their speech or language to communicate. Be mindful that the court may still need to provide additional auxiliary aids and services to ensure effective communication for the court activity.

Adequate training should be provided to all public-facing staff involved in court operations, including the ADA/504 coordinators, jury managers, court clerks, bailiffs, self-help staff, and court entry security personnel, to ensure they are proficient in using various technologies. This training ensures effective communication devices can be implemented promptly when needed for the particular court activity.

It is essential for the court to stay informed about advancements in assistive technology for people with disabilities. For example, it is important that assistive listening systems are compatible with the latest developments in hearing aid technology.

### **Effective Communication Procedures**

Courts must provide auxiliary aids or services and accessible formats in a timely manner, and in a way that protects the privacy and independence of the individual.

The court should have a clearly advertised procedure (through signage, the website homepage or an obvious link on the homepage, social media, program pamphlets, PSAs, etc.) explaining how individuals can indicate their need for and request an auxiliary aid or service. The *ADA Request Form* could include a sample list of potential ways effective communication can be provided, assisting individuals who are unsure of what auxiliary aids or services may be helpful to them. The court can require the individual to give reasonable notification in advance when they request a particular aid or service that requires some lead time to provide, such as obtaining a qualified sign language interpreter or an alternative format. This procedure should be clearly stated in the request process.

In order to ensure **timely response** to requests, such as a qualified sign language interpreter or written material in an alternative format, the court should have standing contracts with a variety of vendors, including 24-hour services if needed, and also have auxiliary aids/technology acquisition procedures in place.

For instance, effective communication with a defendant is crucial for a magistrate to evaluate the pertinent factors in determining bail. If a Deaf individual is detained without bail for an unnecessary prolonged period due to the magistrate's failure to secure a qualified sign language interpreter to ensure a meaningful bail hearing, it could constitute a violation of the ADA. See [\*Settlement Agreement between the United States and Entities of the Commonwealth of Virginia \(2018\)\*](#).

Public-facing court staff should understand that effective communication requests may vary based on the court activity and should be well-trained in the court's effective communication policies and procedures to recognize barriers and respond appropriately. Those handling immediate services, such as the Self-Help Center staff, need specialized training on communication requirements for prompt assistance (see subtitle *Effective Communication in Filling Out Court Forms* below).

### **Primary Consideration**

The request process must provide an opportunity for the court user to request auxiliary aids and services of choice. When selecting an auxiliary aid or service, primary consideration (serious deference) should be given to the aid or service preferred by the individual because that individual is usually best able to identify the communication barriers that hamper participation. However, the court can provide a different aid or service if what it provides is truly an effective means to communication. The court has a continuing obligation to assess if the auxiliary aid or service remains effective (Section-by-Section discussion of 2010 ADA Regulations). See [\*Duvall v. County of Kitsap\*](#), 260 F.3d 1124 (9th Cir. 2001).

### **Determining the Right Auxiliary Aid or Service**

The decision of what type of auxiliary aid or service 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?

### **Method / Nature / Length / Complexity / Context**

In alignment with the above analysis, ADA effective communication rules are flexible. Solutions should fit the activity, setting, and distinctive needs as it relates to how the person's disability uniquely affects them.

### **Examples:**

A woman who is on the autism spectrum faces the threat of physical violence from her ex-boyfriend and is seeking an Order of Protection. To assist her during the court hearing, a support person who understands her communication challenges is necessary due to the lengthy, complex, and contextual nature of the judicial proceeding. Without effective communication assistance, she may not fully comprehend or engage in the process, potentially resulting in her not receiving crucial legal protection against her abuser.

A late-deafened defendant wearing hearing aids is struggling to hear and comprehend the judicial proceeding in his eviction court case due to an outdated ineffective assistive listening system provided by the court. He informs the court that the system is not working properly with his hearing aid telecoil receiver. The court engages in an interactive process to explore alternative solutions that would be more effective, including upgrading the court's listening system technology. The consequences of not receiving effective communication could be significant in that without proper understanding of the proceeding, the individual is unable to advocate effectively for themselves by missing or misunderstanding critical information. This could undermine the defendant's ability to present their case or understand their rights which could ultimately impact the outcome of the court case resulting in their eviction from the apartment.

A Deaf lawyer represents parents with disabilities in child removal cases. Given that the case must be heard before the court within 48 hours of removal, the court is having difficulty finding qualified interpreters at such short notice. Consequently, the court resorts to Video Remote Interpreting (VRI), but it proves somewhat ineffective, causing the lawyer to miss crucial information. The court engages in an extensive interactive process with the lawyer to explore alternative solutions when necessary. Additionally, the court obtains contracts with multiple American Sign Language (ASL) interpreter providers to help ensure availability. The consequences of ineffective communication

could be severe. If the lawyer cannot adequately represent their client due to communication barriers, it may lead to court rulings that could harm both the parent and child's best interests.

A court trial involving civil litigation regarding construction defects includes exhibits such as diagrams, blueprints, and photographs to help the judge and jury understand the information. One of the jurors has low vision and requires that these exhibits be presented in an accessible format so they can comprehend the evidence on the same basis as their fellow jurors. As a result of the interactive process with this juror, the court seeks technical assistance from the State's Assistive Technology Act Program to identify and utilize technology that can provide access to the visual exhibits. The consequences of not providing adequate effective communication are that the juror would not have the same opportunity to evaluate the evidence as their peers.

A blind parent is seeking primary custody of their child. During the process, they are required to undergo a psychological evaluation which includes a section that involves reading and providing written responses. Parents are allowed to take the form home, where they can take their time to read and complete in privacy. In response to the blind parent's request, the court provides, on a flash drive, an accessible PDF and fillable form compatible with screen reading software, enabling the parent to independently read and complete the task. The consequences of not receiving effective communication could be that the parent is unable to fully participate in the custody evaluation process and may face barriers in providing accurate responses or fully understanding the evaluation criteria. As a result, the custody evaluation may not accurately reflect the parent's capabilities, potentially impacting the court's decision regarding custody arrangements for the child.

An individual who has low vision is requesting a legal form from the court's self-help center. In order for this person to fill out the form, the court provides the form in the alternative format of large print. As a result, the court user is able to fill out the form independently. The consequence of not receiving this format is that it creates a situation where the person may struggle to complete the form accurately, potentially impeding their ability to navigate the legal system effectively.

A hard of hearing juror is provided with a real-time captioner. To ensure effective communication, the captioner is allowed into the jury suite during deliberations with the instructions that they are not to record the transcription. The consequence of not having the auxiliary service is that the individual would not be able to follow and contribute to the deliberations and would ultimately not be able to serve as a juror.

A court user with cerebral palsy, who has slurred speech, is participating in mediation regarding a landlord dispute. To ensure effective communication during the interactive process, the ADA/504 coordinator provides a quiet, non-rushed environment, making communication easier for both parties. This setting helps identify the necessary accommodations for effective communication

during the mediation. If effective communication was not provided in the interactive process, unaddressed communication barriers could exist during mediation, giving an unwarranted focus on the person's speech, resulting in a stressful and frustrating experience for this individual.

### **Navigating Complex Situations: Co-Occurring Disabilities and Additional Challenges**

In instances where the court encounters complex situations involving individuals with multiple disabilities and other challenges, effective communication becomes crucial to ensure access to justice. For example, consider a court user who experiences communication difficulties due to being severely hard of hearing, has cognitive problems due to a stroke, struggles with drug addiction, and in addition to their disabilities only speaks Spanish.

When the interactive process with the court user proves to be difficult, a multifaceted approach will be necessary. There are situations such as these where the more the court can learn about the individual and their disability-related challenges as it relates to the court activity, the better equipped the court will be to facilitate access.

Like assembling pieces of a puzzle to understand the full picture, the court may seek insights from trusted individuals familiar with the court user's communication abilities, such as family members. It can also leverage external resources like disability organizations and appropriate medical and other professionals to gather recommendations. Furthermore, identifying and implementing appropriate assistive technologies tailored to the court user's needs is essential.

For this scenario, assistive technologies might include an up-to-date assistive listening system and simultaneous written communication tool like the Ubiduo, along with a Spanish language interpreter. Adequate time is also allocated during the court activity to ensure comprehension as it relates to the individual's cognitive needs.

As the court navigates the intricacies of these situations, it should continually evaluate the effectiveness of its communication strategies and remain flexible to adapt and modify approaches as needed to ensure access to justice.

### **Cell Phone / Smart Devices Policy Issues**

As previously mentioned, there is now a wide array of mobile applications designed to assist individuals with disabilities, including those that aid in communication. It is imperative for the court to establish effective communication ADA-compliant policies that allow individuals to bring their smart devices into the building. As previously addressed, security personnel can inform the visitor of the prohibition against using the smart device such as taking pictures or recording a judicial proceeding, explaining the consequences of violating this rule.

### **Effective Communication in Filling Out Court Forms Issues**

Court self-help centers are valuable resources for individuals navigating the legal system without legal representation. These centers provide information on court procedures, courtroom etiquette, case presentation, and legal terminology. They also grant access to necessary legal forms for judicial proceedings. While staff cannot offer personalized advice tailored to individual cases, they play a vital role in guiding individuals on how to complete forms themselves, fostering self-sufficiency and enhancing understanding of the legal process. However, when a court user with a disability faces accessibility barriers preventing form completion, the center must provide accessible alternatives where the individual can effectively complete the form in **real-time**, giving them the same opportunity that others have.

Several instances where court users may require auxiliary aids or services to effectively complete a legal form could include individuals who:

- Have limited use of their hands and arms, making it difficult to fill out paper forms or use an inaccessible computer or kiosk station.
- Are blind or have low vision, and for whom paper forms inaccessible and the available electronic forms are incompatible with screen reading software.
- Have cognitive related disabilities resulting in difficulties in reading or comprehending the questions on the form.

### **Effective communication solutions could include:**

- Specially trained court staff scribes to assist the individual in filling out forms.
- Specially trained court staff or qualified others to explain the form questions and requirements in simpler terms.
- Electronic accessible fillable PDF forms.
- Forms available in alternative formats on a fully accessible kiosk.

Again, solutions should offer immediate access for court users to fill out their forms, given this convenience is afforded to those without disabilities. If immediate access is not given, the court must formally declare any undue financial or administrative burdens, ensuring the claim is defensible. Following this, the court should make efforts up to the point of undue burden to accommodate the needs of the individual.

Solutions that may need reasonable notice could be requests for a qualified sign language interpreter or an alternative format such as large print or Braille.

### **Judiciary Scribing Program**

Scribing services can help make court forms accessible to users with disabilities. For example, the New Mexico Judiciary's Scribing program started as a successful pilot in two Judicial Districts and now serves self-represented litigants and prospective jurors statewide. After the pilot, the New Mexico Administrative Office of the Courts received a grant from the State Justice Institute and partnered with the National Center for State Courts to develop a program that trains court employees to fill out court-approved forms and jury questionnaires using the person's own words. In 2022, the New Mexico Supreme Court issued an Order to implement scribing for individuals with disabilities, those with limited English proficiency, low literacy, and those with limited/no computer access across the thirteen Judicial Districts, the New Mexico Court of Appeals, and the New Mexico Supreme Court. In 2024, the Supreme Court issued an additional Order expanding scribing services to any court user who requests them. The Scribing program is an initiative of the Statewide ADA Title II Coordinator's Office. For more information see [New Mexico Judiciary Scribing Services](#).

### **Proceedings and Other Court Activities Held Remotely Guidance**

If a qualified interpreter is present, they will appear as a participant, and their name should include "Interpreter" for identification purposes. The interpreter(s) should be "pinned," which allows the interpreter's video feed to stay in constant view, regardless of who is speaking. Pinning the interpreter(s) will not interfere with the view of other participants and will not affect any recordings.

However captioning is provided for effective communication, whether through CART (Communication Access Real-Time Translation) or by software/AI generated captions, it must be accurate and effective. If videos are included, due to the nature of films, they should be captioned for participants who are Deaf and hard of hearing, even if a qualified interpreter and/or CART is present.

To accommodate court users who are blind or have low vision, the court should ensure that everything displayed on the virtual platform, as well as chat entries, is verbalized. If there are extensive chat entries, including web links, the transcript should be saved and shared with the participant after the meeting. All documents viewed through the screen-sharing feature should be read aloud. If the documents are extensive, a qualified reader should read them, or they should be provided to the individual before the proceedings or other court activities in an alternative format of their preference. Any unexpected links, documents, or videos that arise during the court activity should be shared afterward in an accessible manner.

### **Qualified Sign Language Interpreters Defined**

Auxiliary services include ASL (American Sign Language) interpreters, and if spoken non-English language interpreters are provided, courts may also need to offer qualified interpreters who can sign in other languages. Additionally, other forms of disability-related interpretation such as English

word order, oral and cued speech transliteration, and tactile signing, which is for individuals who are deaf-blind, should be made available as needed. For information on these various types of interpretation services, see the National Deaf Center's publication [Sign Language Interpreters: An Introduction](#).<sup>37</sup>

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 court user is provided a certified sign language interpreter, but the individual is having difficulty in understanding the interpreter's particular linguistics and dialect or the interpreter is not familiar with the specialized vocabulary involved. 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 court user should be provided.

It is important to note that some states may have more stringent laws regarding sign language interpreters in court and other settings. These requirements might also be included in more general court-related and other language access legislation.

**Important Note:** There are common misperceptions regarding communication with Deaf and hard of hearing individuals. These include inappropriate reliance on handwritten notes for those who primarily use ASL, erroneously assuming these individuals can effectively lip-read and don't require auxiliary aids or services, and enlisting unqualified staff members with limited sign language proficiency.

It is crucial to understand that even for those proficient in lip reading, also known as speech reading, accuracy can be as low as 30%. This is due to the complexity of matching visual cues to specific sound units that distinguish one word from another. Generally, lip reading in the context of court activities is **not** considered an effective form of communication. This is because it requires continually observing the speaker's overall behavior, including mouth and face movements, nonverbal cues such as facial expressions, and body language, to pick up emotions, intentions, and other subtle clues. These factors can lead to potential misunderstandings, especially in complex, high-stakes court settings.

### **The Issue of Hand Restraints and Effective Communication**

A reasonable, individualized assessment of a detainee, defendant or inmate regarding any present security threat should be conducted. If a threat is absent, then the Deaf individual using sign language to communicate should not have their hands restrained when there is a potential need for communication in a court activity, including when using telecommunication devices related to the court. Where needed, consider removing the restraints in a securely created 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 individual'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.

### **Exceptions to Providing a Qualified Interpreter**

The court cannot require that the court user to provide 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 includes the need for accuracy, effectiveness, and impartiality.
  - Make sure that this arrangement is **truly voluntary** in that the companion is not put in a position of feeling conflicted or pressured in any way. See 28 C.F.R. Part 35, App. A (“The Department [of Justice] states unequivocally that consent of, and for, the accompanying adult to facilitate communication must be provided freely and voluntarily both by the individuals with the disability and the accompanying third party...”).
- In emergency situations where there is an 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.

### **Video Remote Interpreting**

In accordance with ADA Title II, video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in the following ADA regulation.

### **Video Remote Interpreting (VRI) Services**

See 28 C.F.R. § 35.160(d) (“a public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides –

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- (2) A sharply delineated image that is large enough to display the interpreter’s face, arms, hands, and fingers, and the participating individual’s face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.”).

There are **no exceptions to the rule**. VRI cannot be used if there are persistent technology difficulties and/or lack of staff training on the technology.

### **VRI is Not Effective in All Situations**

VRI differs from in-person qualified interpreters. Depending on the court activity, it can be effective. However, VRI may not be effective in situations involving extensive, stressful, and complex court activities, especially where the court user is limited in their ability to see the video screen. Similarly, it may not be effective in situations where there are multiple people in a room and the information exchanged is highly complex and fast-paced. In situations where communication is needed for persons who are deaf-blind, it may be necessary to summon an in-person interpreter to assist.

### **Qualified Reader Defined**

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

### **Companions and Effective Communication**

The court must take appropriate steps to ensure that communications with companions with communication-related disabilities, such as deafness or blindness, are effective as provided in 28 C.F.R. § 35.160(a). A companion is defined as a family member, friend, or associate, or an individual seeking access to a service who along with such individual is an appropriate person with whom to communicate.

This requirement is not limited to individuals with a direct interest in judicial proceedings, programs, services, or activities. For example, a courtroom spectator, who is hard of hearing, wishes to observe the district courthouse judicial proceeding, which is open to the public. Even though the court believes that this person has no direct involvement in the proceeding at hand, it must provide effective communication, if requested, unless it can demonstrate that undue financial and administrative burdens would result.

[Prakel v. Indiana](#), 100 F. Supp. 3d 661 (S.D. Ind. 2015)

In the case of Prakel, the plaintiff, who is Deaf with ASL as his primary language, sought to attend his mother's criminal proceeding, including her pretrial hearings which included fact-finding and sentencing. Prakel alleged that he was told the court would not provide interpreters unless he was a witness or a defendant, but he persisted in asserting his need for a qualified interpreter. The State contended that these hearings were not "judicial services" since they were not part of formal trial proceedings and because Prakel was not a witness or criminal defendant. The Court found for Prakel, stating that the ADA applies to all government operations and that any public judicial proceeding and trial are judicial services. The court cited plain language of Title II "A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communication with others," and members of the public may participate in criminal proceedings.

Below are further legal actions exemplifying the significance of effective communication, including notable Circuit Court cases and settlement agreements reached by DOJ:

- [Chisolm v. McManimon](#), 275 F.3d 315 (3d Cir. 2001)
- [Luke v. Texas](#), 46 F.4th 301 (5<sup>th</sup> Cir. 2022)
- [Galloway v. Superior Court of D.C.](#), 816 F. Supp. 12 (D.D.C. 1993)
- [Settlement Agreement between the U.S. and the Orange Cty. \[FL\] Clerk of Courts \(2014\)](#)
- [Settlement Agreement between the U.S. and the Santa Clara County \[CA\] Superior Court \(1996\)](#)

#### **Additional ADA Title II State and Local Government Requirements**

- Public entities **communicating via telephone** are obligated to provide equally effective communication to individuals with disabilities, including those with hearing and speech disabilities. See 28 C.F.R. § 35.161. The Telephone Relay Service (TRS), required by ADA Title IV, can typically fulfill this requirement.
- **Written communications** provided by public entities are subject to the effective communication requirements and must, when requested, be available to persons with visual

impairments in a usable form, barring fundamental alteration or undue financial and administrative burden. See 28 C.F.R. § 35.160.

- **Television and videotape programming** produced by public entities must provide access to persons with hearing impairments. Access may be provided through closed captioning. See 28 C.F.R. § 35.104.

### **Telecommunications Relay Service (TRS)**

All court staff who are public-facing should be aware and use this free service which is accessed by dialing 711. TRS ensures equal communication access to telephone and video services for people who are Deaf, deaf-blind, hard of hearing, and have speech-related disabilities. TRS providers must ensure user confidentiality, and no records of conversations are made. The service allows hearing callers to communicate with relay users and includes Text-to-Voice TTY-based TRS, Voice Carry Over, Speech-to-Speech Relay Service, Captioned Telephone Service (including Internet Protocol), and Video Relay Service (VRS). To learn more about TRS see [Telecommunications Relay Service - TRS | Federal Communications Commission](#).

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## ***Security Checkpoints and the Public with Disabilities***

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It is imperative that security personnel possess a thorough understanding of the court's ADA Title II obligations. This includes ensuring effective communication, physical access, and making reasonable modifications in policies, including security rules and procedures, when necessary. This knowledge coupled with disability awareness can also prevent what could be perceived as instances of disability-related harassment or intimidation during the implementation of security procedures.

Disability documentation to justify the use of an alternative search procedure to accommodate the individual so they can enter the courthouse should not be required.

Direct threat, as defined by the ADA, can come into play and should be addressed appropriately (refer to the chapter *Direct Threat* within this Guide for additional information).

Security should be aware of how to contact the court's ADA/504 coordinator(s) for situations that warrant their involvement.

### **Security Personnel's Awareness of Policy Modifications to Create Access**

An example, as described in an earlier scenario, could be the court's alternative access policy regarding the prohibition of cell phones and other smart devices. Under this policy, individuals who are reliant on medically related apps to mitigate their disability may be permitted to bring these devices into the courthouse. This access policy can outline how security personnel will inform

visitors about the prohibition against using the device for photography or recording during judicial proceedings, along with explaining the consequences of violating these rules.

### **Court Entry and Security Challenges for Individuals with Disabilities**

Some individuals with behavioral/mental health, intellectual, and autism related disabilities may encounter discomfort or difficulty when interacting with court security during entry into the courthouse. It is crucial for security personnel to be trained in and aware of the best communication and interaction practices for these individuals. Keep in mind that there is a link between a person's perceptions and attitudes and their behavior. It is common to judge or be wary of behaviors that aren't understood, possibly stemming from confusion. The **choice of words matters**, as they can either support cooperation or intimidate and heighten anxiety. In addressing these challenges, the richness of resources and relationships comes into play. Through education, training, and technical assistance, security personnel can appropriately and effectively respond to these situations.

### **Security Checkpoints and Medical Implants, Prosthetics, and Mobility Devices**

The security checkpoint's protocol for accommodating incoming court users with disabilities who cannot pass through the security scanner due to medical conditions or implants and prosthetics, or their reliance on a mobility device that might trigger the detector, should emphasize discretion and respect for the court user's privacy. While initial screenings with a security wand may suffice, in cases, due to medical safety or other reasons related to the device, necessitating further procedures such as pat-downs, security personnel should have comprehensive training to ensure respectful and safe searches. This includes careful handling of the court user's mobility device(s) to prevent damage.

It is crucial for security personnel to demonstrate patience and maintain clear communication when interacting with court users regarding the handling of their mobility or medical devices, including necessary pat-downs that could come into contact with medical implants, prosthetics, or ostomies. Such interactions should involve sensitivity and understanding towards the court user's unique needs while concurrently prioritizing the safety of the court environment.

### **Courts and Security Entities**

Some courts have privately contracted security while others are legally mandated to have law enforcement such as the sheriff's office provide security. In the case of a private contractor the court should ensure through their contract that the company carries out the court's ADA Title II obligations. This can be done by making sure the contractor is fully trained in how to work with the court to ensure ADA compliance. In cases where a separate governmental entity provides court security, the best practice is for the two entities to work out a partnership of how ADA training and obligations will be carried out to ensure equal access to the courthouse for the public with disabilities.

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### ***ADA Accommodations and Interference, Harassment and Retaliation***

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Title V of the ADA prohibits coercion, threats, or retaliation against individuals with disabilities or those supporting them in asserting their rights under the ADA. Interfering with a sanctioned accommodation may constitute a violation of the ADA. To prevent interference, appropriate court staff (e.g., ADA/504 coordinators, judges, jury managers, clerks, bailiffs, and clinic directors) should be fully informed of the accommodations provided.

For instance, if the bailiff is not fully aware that the presiding judge has granted the accommodation of a support person to sit with an autistic defendant to aid in understanding the judicial proceeding and to keep the individual calm and the bailiff removes this accommodation before start of the hearing, this could inadvertently violate the ADA.

The court should be vigilant in preventing any interference with court-provided accommodations by external parties such as prosecutors, defense attorneys, or court contractors.

For instance, situations that could constitute ADA violations might involve a public defense attorney informing their client, who is on the autism spectrum, that only the defendant and their lawyer are allowed to sit at the defense counsel table. This could result in the attorney dismissing the support person at the table before the judicial proceeding begins because they are unaware that the accommodation was granted by the court. Additionally, if the judge is not fully informed of this action, they may assume that the support person was ultimately unnecessary.

Similarly, if the court family clinic director approves the accommodation of modifying a parental evaluation to accommodate the parent's psychiatric disability, but the contracted psychologist fails to implement the accommodation due to being unaware of it or disagrees with the accommodation, this failure could constitute an ADA violation.

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### ***The ADA, Animals, and the Courthouse***

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There are a variety of different scenarios that can bring animals into the courthouse. They may be accompanying a witness, a litigant, an attorney in a court case, someone entering the court to file paperwork, or anyone from the general public.

#### **What Animal is What?**

- ✓ **ADA Defined Service Animals** are dogs or miniature horses that are individually trained to perform tasks for a specific person with a disability and have full public-access rights under the ADA.
- ✓ **Emotional Support Animals** have no species limitations and provide passive support (no task training) to a specific owner with a disability and only have limited legal rights under the Fair Housing Act.

- ✓ **Therapy/Facility Animals** are usually dogs that are trained to interact with strangers to provide comfort by reducing stress and anxiety. The animal usually completes certification training (the contents of which differ among organizations). They do not have public access rights but are increasingly accepted in courtrooms as trial aids (see [From the doghouse](#)<sup>38</sup>).

### What Do ADA Defined Service Animals Do?

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for themselves, promoting independence in the home, community, and workplace. They are working animals whose focus must remain on the handler; therefore, people should not touch, feed, or distract the animal.

### Who Uses Service Animals?

Individuals with disabilities utilize service animals for various purposes, for instance:

- Those who are blind or have low vision rely on dogs or miniature horses to guide and assist them with orientation.
- Individuals who are Deaf can depend on dogs to alert them to sounds.
- Those with mobility disabilities utilize dogs to pull their wheelchairs or retrieve items.
- People with epilepsy may use a dog to warn them of an imminent seizure.
- Those with psychiatric disabilities may employ a dog to remind them to take medication.
- Wounded warriors with disabilities increasingly utilize service animals to aid them with activities of daily living as they transition back into civilian life.

ADA Title II service animal regulations state that generally, a public entity shall modify its policies, practices or procedures to permit the use of a service animal by an individual with a disability. See 28 C.F.R. § 35.136.

### ADA Defined Service Animal

The ADA definition of a service animal is limited to a **dog** that is **individually trained to perform tasks** for an **individual due to disability**. See 28 C.F.R. § 35.104. The key is recognition and response by the service animal to assist the individual with a disability. Service dogs are allowed to be any size and there is no prohibition regarding certain breeds. Also, a reasonable modification in policy must be considered to allow the specific breed of **miniature horse** if it is trained to do work or perform tasks for that individual with a disability. See 28 C.F.R. § 35.136(i).

Only two inquiries are allowed if the need for the service animal is **NOT** obvious nor apparent. Consider asking these questions in a private setting, if needed.

#### 1. Is the animal required because of a disability?

- a. Asking “Is this a service animal?” instead allows the handler to draw the conclusion, whereas the determination should be made based on the information provided by the handler, as outlined by ADA regulations.

**2. What work or task has the animal been trained to perform?**

- a. A task demonstration cannot be asked for nor required.

**Do not make inquiries about a disability.**

**Care of the Animal**

The court is not responsible for the care or supervision of a service animal. However, depending on the nature of the court activity, the handler may need to attend to the animal's needs. For instance, during a lengthy judicial proceeding, the court may need to grant additional breaks for the animal to drink water or relieve itself.

**Full Public-Access Rights and Exceptions**

The ADA service animal must be permitted to accompany the handler in all court activities. However, if the animal constitutes a direct threat, is excessively disruptive and the handler does not take action to effectively control it, is not housebroken, or causes a veritable fundamental alteration to the service or program, it may be excluded. In such cases, the court could consider implementing procedures for safely crating the animal to prevent the handler from having to place it in a dangerously hot car or other unsafe situations. Once the animal has been appropriately and safely removed, the court user may remain in the facility without the animal. The court should consider providing accommodations to address any disability-related barriers resulting from the removal of the animal.

An instance of a direct threat would occur if a service animal growls or displays aggressive behavior toward others, which may lead to its exclusion if the threat cannot be mitigated through a reasonable accommodation to an acceptable level. However, assumptions cannot be made about how a particular dog is likely to behave based solely on past experiences with other dogs or on the particular breed.

The term "disruptive behavior" refers to continuous and genuinely disorderly conduct. Minor actions such as some whimpering, occasional barking, taking time to settle down by scratching the floor, mild excitement or playfulness with the handler, or drooling do not fall under disruptive behavior. However, allowing an unleashed service animal to roam freely throughout a facility or continuously touching others with their paws or nose may be considered disruptive. Additional examples of unacceptable behavior include uncontrolled barking, jumping on people, or running away from the handler.

Again, note that if for any reason, the animal becomes disruptive, but the **handler immediately brings it back under control, the dog cannot be excluded.**

**Important to note:** If the service animal appears to be out of control, such as continuously barking, it is crucial to observe whether the dog is performing a task, such as an **alerting behavior**. For example, a dog may be barking continuously while looking directly at the handler to alert them that their blood sugar is low or that a seizure is imminent.

It is imperative to emphasize that while service animal feeding and drinking schedules are carefully managed to prevent restroom incidents, **occasional accidents** may still occur due to the animal's biological needs. For instance, during a lengthy judicial proceeding with limited breaks for the handler to attend to the dog's restroom needs, if an accident occurs, this should be taken into consideration when deciding whether to remove the dog.

**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
- 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 proof of a training certification proving that it is a legitimate service animal?

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

**Tip:** Service animal harnesses and training certificates are readily available to anyone on the internet and can be used to misrepresent pets as service animals.

2. Does the ADA cover comfort animals?

**No!** The ADA does not protect comfort/emotional support/therapy 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. They do not engage in recognition and response.

Keep in mind that individuals may not always use the precise terminology defined by the ADA when referring to their ADA defined service dog. Instead, they might call it an emotional support or therapy dog, or simply say the "dog helps them." In reality, the dog has been trained in one or more tasks related to recognition and response. This underscores the importance of asking the

second question: “What work or task has the animal been trained to perform that is disability-related?”

### **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 violation, interference of a service animal, etc. To learn more, go to [Table of State Assistance Animal Laws](#).<sup>39</sup> Possible amendments and updates to existing state laws should also be researched.

Service animals are subject to public health, licensing, and registration requirements.

### **Allowing Comfort Animals as an ADA Policy Modification**

Requests for the animal as an accommodation should be subject to the same ADA analysis and procedure as any other request for modification of policy. Keep in mind that under some state service animal laws it is unlawful for unrestrained animals to interfere with or attack a service animal, therefore if the court allows comfort animals, they should manage this accordingly when an ADA defined service animal is also in the courthouse.

It is worthy to note that the use of a comfort animal in court was affirmed by the Supreme Court of Pennsylvania in [Commonwealth v. Purnell](#), 259 A.3d 974 (Pa. 2021). The Pennsylvania Supreme Court held that the trial court did not abuse its discretion in allowing a witness to testify with the assistance of a comfort dog because it balanced the degree to which the accommodation will assist the witness in testifying in a truthful manner against any possible prejudice to defendant's right to a fair trial. Trial courts had broad discretion in controlling trial conduct and Pa. R. Evid. 611 allowed a trial court to consider whether a comfort dog could assist a witness in testifying in a truthful manner during a trial.

The National Center for State Courts, Trends: Close Up publication: [Animals in Court](#) includes discussion on the use of comfort or therapy animals in courtrooms. The article notes, “Comfort or therapy animals are used in some courts for therapeutic reasons (e.g., Florida Dependency Courts). While this is a relatively new practice, courthouse therapy or comfort dogs are being used in several courts in California, Colorado, Florida, Maryland, Michigan, Pennsylvania, and Washington State. Statutory authority exists in some but not all of these states. Typically, these programs are started by the prosecuting attorney’s office as a way to provide support for child witnesses who have been traumatized. Veteran courts have also started to recognize the therapeutic benefits of comfort animals. Courts that allow or even encourage the use of comfort/therapy dogs for the benefit of victims or litigants are not dealing with ADA or Section 504 issues.”<sup>40</sup>

To learn more about dogs as trial aids go to [From the Doghouse to the Courthouse: Facility Dogs as Trial Aids for Vulnerable Witnesses](#).<sup>41</sup>

**For more information on ADA defined service animals:**

- [Frequently Asked Questions about Service Animals and the ADA](#)<sup>42</sup>
- [Service Animal and Emotional Support Animals. Where are they allowed and under what conditions?](#)<sup>43</sup>
- [Animals in Court - Courthouse Facilities - National Center for State Courts](#)<sup>44</sup>

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***Mobility Devices / Other Power-Driven Mobility Devices***

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DOJ 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.

DOJ's regulations have always stated that ADA covered entities 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.

DOJ expanded their ADA regulations that state covered entities (which would include courts) must allow people with disabilities who use other types of power-driven mobility devices (OPDMD) 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 court can recognize these situations where the public enters through security checkpoints. If due to legitimate safety reasons the courthouse cannot accommodate an OPDMD, it should consider a modification in policy to create mobility access. For example, the court could provide a mobility device such as an easily maneuverable wheelchair to enable individuals to access court activities within the facility, while also offering a secure place to store the OPDMD during their visit.

Refer to the DOJ's [ADA Requirements: Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices](#)<sup>45</sup> 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.). The guidance includes obligations, assessment factors, policies, credible assurance, and training related to the use of OPDMDs.

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## *Effectively Responding to Court Disability-Related Difficult Situations*

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***While other chapters in this Guide can be used as training modules, this chapter is specifically structured for direct use in training. Consequently, it includes some repetition of previously covered information and uses bullet points and bolding to emphasize key training points.***

In building upon this extensive Guide's systematic application of ADA Title II requirements in the court's programs, services, and activities, court personnel can learn to successfully respond to court users with disabilities who are challenging and/or deal with problematic situations. By **developing and applying ADA analytical skills**, court workers can approach these situations with effective assessments and actions that will aid in ensuring program access.

### **What Creates Difficult Situations**

Factors that can create difficult situations contributing to the challenges faced by court users with disabilities or exacerbate the agitation of an already frustrated court user include:

- The Court is **generally inaccessible** and **lacks the procedural infrastructure** (evaluation and transition plans) to move towards accessibility for people with various disabilities.
- The ADA coordinator and court personnel **lack knowledge** of ADA/504 obligations and/or **how to apply** their knowledge effectively, hindering their ability to engage in solution analysis to provide barrier removal/accommodations.
- There is **no** widely publicized notice of **ADA rights**, including by contractors, with no or limited ADA **grievance procedures** that fail to resolve matters promptly and equitably.
- **Instructions** on how to make an ADA request are **not obvious or clear**, and/or the *ADA Request Form* is overly complex or confusing, or conversely, too simple to provide the necessary information to effectively remove barriers.
- The ADA coordinator and court personnel **fail** to engage in the **interactive process** with court users with disabilities, further exacerbating accessibility challenges.
- The court user does **not** initially **identify as having a disability**, but barriers become evident due to a possible disability, highlighting the need for proactive measures to address accessibility.
- Court staff **lack community connections** and **resources** to seek help and education in understanding and responding to court users with specific kinds of disabilities.

### **Ongoing Pathways to Create Access**

Court endeavors to establish and maintain frameworks that **prioritize consistent accessibility** for people with disabilities, involving implementing clear pathways that address accessibility needs through ongoing efforts and good faith practices, can include the following:

- The Court maintains an overall procedural infrastructure that consistently progresses towards accessibility (**evaluation/transition plan**).
- The court widely publicizes the **ADA notice of rights** and establishes an effective **grievance process** in compliance with ADA requirements. This process can also help identify weaknesses in ADA compliance, which can then be addressed in the ADA evaluation and transition plans.
- The court ensures that **digital devices and information are fully accessible** for people with all types of disabilities including those related to learning, vision, hearing, and mobility.
- Plans are implemented to **remove architectural barriers** and develop **access plans** to address existing barriers in a dignified, integrated manner.
- All policies and practices undergo thorough review to **incorporate provisions for alternative access** where needed. A policy is established stating that **policies, practices, and procedures can be modified** to afford disability-related access.
- **Acquisition procedures for auxiliary aides and services** are in place to ensure the provision of effective communication in a timely manner for individuals with various disabilities and in a way that protects the privacy and independence of the court user.
- Court staff are **currently trained** in the use of disability assistive devices, and the court has acquisition procedures to **procure assistive technology**.
- The process of making an ADA **accommodation request is widely advertised, clear, and straightforward**. It outlines how to make the request and what to expect afterward. The *ADA Request Form* is designed to explain access methods (e.g., policy modification, effective communication, and physical barrier removal) and it is structured to gather necessary information for the court to facilitate equal opportunity.
- When a court user has a specific request, **it is not denied**, unless there is an **extremely good reason** for doing so. All accommodation requests are handled in a manner that ensures no prejudice against the court user in the court activity.
- The ADA/504 coordinator(s) maintains regular communication and information **sharing among appropriate staff**, especially when handling out-of-the-ordinary access requests. This ongoing collaboration facilitates the sharing of solutions for access challenges.
- It is ensured that **all contractors** adhere to the court's ADA/504 obligations and reflect the court's ADA best practices.
- A statewide **Court ADA/504 Coordinator Network** is established, and key staff also participate in other state, local, and national coordinator networks. This maintains open lines of communication to access information and potential solutions for various situations and settings, while maintaining the confidentiality of the court user.

- The ADA coordinator identifies and engages in **community, state, regional, and national services and partnerships**. This involvement can contribute to creating access, including the provision of training and guidance to court staff, as needed.
- All court staff participate in **ongoing ADA/504 training**, progressing to more advanced training to effectively address specific and complex issues.

### **The Richness of Resources and Relationships Can Help**

As previously and clearly indicated, the court's best practice of maintaining an extensive network of resources and relationships can assist the ADA/504 coordinator, staff, and contractors in finding **effective accommodation solutions for challenging situations**. This network should include experts and organizations working with people who have various disabilities, especially those conditions where court users may face more challenges navigating a generally inaccessible court system. Examples include traumatic brain injury, psychiatric conditions, intellectual and developmental disabilities, autism, and co-occurring disabilities such as addiction and psychiatric disabilities. People with these disabilities themselves are invaluable resources, and their life-given expertise and perspective should be heard and utilized in addressing disability rights and accessibility issues.

### **The Interactive Process for Difficult Situations**

In engaging in the interactive process, conversations are not always straightforward verbal exchanges. To ensure effective communication, other **creative methods** may need to come into play, depending on the court user's disability as well as their present emotional state. At times, reaching barrier removal solutions **requires listening** to frustrations, anxiety, fears, or past negative court experiences. Once the person has the opportunity to feel heard, they can then hear. Listening also enables the gathering of valuable information about potential disability-related barriers that may arise during a court activity. It is advantageous to be trained in de-escalation skills that can be employed to effectively manage high-stress situations, leading to access solutions.

The interactive process should involve clear explanations of how this method works and what it is trying to accomplish. This can ensure court users of the court's commitment to providing equal and fair access. Court users should be informed that **participating in this process is essential to identify and address access solutions** effectively. Ensure that court users are fully informed, as much as possible, about their specific court activities, which could help identify any disability-related barriers and how to address them. If needed, consider involving a knowledgeable third party to assist in the interactive process.

As previously stated, a **third party can request accommodations on behalf of an individual** with a disability, but the court should include the individual in the interactive process as much as possible. Third party requests may occur more often for court users with cognitive and behavioral related disabilities. A reasonable connection should exist between the individual with a disability and the

third party making the request, guaranteeing the appropriateness and relevance of the relationship.

### **Creative Approaches for Preventing Problematic Situations**

These strategies, appropriately applied to the court user disability-related access needs, reflect a proactive and considerate approach with a focus on promoting **accessibility, clarity, and effective communication**. Implementing these methods can also help alleviate the daunting nature of the court activity, helping the court user feel less anxious and more comfortable.

- **Fill out the ADA Request Form with the court user.** This approach ensures that the court user is supported in requesting any accommodation and can foster collaboration.
- Provide clear **written instructions** for the court user, outlining tasks, expectations, and any relevant guidelines. This strategy emphasizes clarity, ensuring that the court user understands what is expected of them and how to navigate the process effectively.
- Create a **visual map** or **simple bullet-point guide** to navigate the court activity. Visual aids can be incredibly helpful for the individual struggling with written instructions.
- Utilize **auxiliary aids and services** that are crucial to create effective communication. Acknowledging and accommodating different communication needs is crucial for ensuring effective participation.
- Encourage **creative brainstorming** to explore possible effective accommodations. By encouraging open-mindedness, solutions can be sought that are tailored to the specific needs of the individual court user.
- Assess whether the court user responds better to a **single point of contact** for communication rather than interacting with multiple court staff members. This recognition can enhance communication and reduce stress, potential misunderstandings, and conflicts.

### **An Analytical Approach to Addressing Complex Situations for Creating Program Access**

In complex, demanding, and perplexing situations, the following assessment can aid in dissecting the case and then **piecing together the puzzle** to determine necessary actions. Keep in mind that the interactive process plays a key role in this approach.

1. What does the court activity entail?
2. Does the court user have a disability and are they a qualified person for this activity?
3. Are there any barriers related to disability? Which parts of the activity are inaccessible?
4. Then which requirements apply?
  - a. Are modifications needed to policies, practices, procedures, or rules?

- b. Is effective communication needed? Are auxiliary aids/services or alternative communication methods required?
  - c. Is physical barrier removal or dignified workarounds for architectural barriers necessary?
5. Is disability documentation needed? If so, consider confidentiality parameters.
  6. Is it necessary to consult or involve a knowledgeable third party in the interactive process?
  7. What accommodations can be put in place to remove the barriers? Is follow-up needed to ensure access?
  8. Are judges, clinic directors, and other relevant staff, as well as additional appropriate parties fully informed and in agreement (if necessary) with the accommodations?
  9. Does direct threat come into play? What accommodation can reduce it to an acceptable level?
  10. Is there an undue burden or fundamental alteration at play? What solutions can be implemented to ensure equal opportunity for justice without reaching undue burden?

### Other Considerations

As previously discussed, there may be instances where a court user, experiencing frustration and exhibiting challenging behavior towards court staff, is unaware that this behavior stems from encountering disability-related barriers in the court activity. In such cases, if court staff **reasonably believes a disability-related issue is involved**, the court should proceed by initiating the interactive process. This involves respectfully explaining to the individual that the court aims to ensure accessibility for all users, including those with disabilities and medical conditions. Furthermore, the staff should outline the ADA process and invite the court user to participate in resolving any issues. Note that this approach does not initially involve disability inquiries but rather opens the door for the court user to engage in the ADA accommodation process.

It is central to meet individuals where they are, **acknowledging** their **experiences** and the **language they use** to describe their situation. While the term “disability” is the language of the ADA, it may carry stigma for many individuals. Therefore, it is crucial to listen to how individuals describe themselves and their circumstances, such as referring to a “medical condition” or how their environment frustrates them. Reflecting back their self-described language demonstrates respect and understanding. At the same time, it is essential to **introduce ADA terminology** in a way that emphasizes their civil rights.

Given that the situation the court is responding to is already demanding, challenging, and complex, the court user may decline accommodations offered. A court user has the **right to decline an accommodation**, even if it effectively removes disability-related barriers. However, refusing an accommodation could result in facing participation barriers. It is advisable to engage in the interactive process to understand what **could be legitimate reasons for refusal**. This may lead to

exploring alternative accommodation options or addressing concerns the court user may have about a particular accommodation. It is important to recognize that a court user's inconsistent use of an accommodation does not necessarily mean it is not needed. The decision to use the accommodation should be based on the individual's judgment of when they think it will be useful.

There may be situations where an individual **makes a high number of initial accommodation requests and/or numerous requests in succession**. Given that most court activities are stressful and adversarial, it could be worth acknowledging and exploring the fears, stress, and anxieties the person has regarding the court activity that are driving these requests. This approach may help narrow down the reasonable accommodations that are actually needed to address the disability-related barriers.

Always, in **good faith efforts**, move toward solutions involving policy modification, effective communication, and physical access to enable the person, as much as possible, to fully participate in the court activity. Document all compliance efforts, including successes. Remember to ensure confidentiality, as appropriate. The end goal is always full access to justice.

### **Concerns of Illegitimate Requests for Accommodations**

If the court has **objective evidence through observation or other factual means** that an individual does not have a disability covered under the ADA or that access requests are unwarranted, the court can address the situation accordingly. The ADA process extensively discussed throughout this Guide will help address these situations. When objectively justified, the court may seek proof of a disability. The court can also determine if there are disability-related barriers associated with components of the court activity in question. Always document compliance efforts in these situations.

### **Difficult Situations and Undue Burden/Fundamental Alteration**

Recognizing that certain situations may require **intensive attention and effort**, it is important to note that this **does not necessarily constitute** an undue burden. However, there are instances where an undue burden and/or fundamental alteration does occur. In such cases, the court should ensure that **every reasonable effort is made** in good faith to accommodate the individual up to the point of fundamental alteration or undue burden to provide access. Undue burden defenses are subject to a very high standard of review, and the court should thoroughly **document** all good faith efforts if such a claim is to be made.

**For example**, in a highly contentious divorce, a couple is undergoing court-ordered arbitration to settle child custody, property division, and support matters. After one month, one of the parents, who identifies as having a disability, requests to change the weekly two-hour meetings to 20-minute sessions every two weeks due to their disability. Furthermore, this parent has been sending extensive and intimidating emails daily to the ADA/504 coordinator, demanding this change. The

individual refuses to engage in discussions with the coordinator to identify specific inaccessible issues and explore alternative solutions for creating access.

The alteration of the change in meetings could significantly prolong finalizing the divorce and custody settlement. The court can carefully weigh the impact of this accommodation on the other parent and the children, alongside any legal considerations and administrative challenges. Given the complexity of the issues being addressed, which require thorough discussion and negotiation, the potential ramifications of this change can be thoroughly evaluated.

If it is determined that this requested accommodation imposes an undue burden and/or fundamental alteration, and it is denied, the court should consider alternative accommodations, including exploring other means to a settlement as approved by the judge. Engaging a knowledgeable third party familiar with the parent's disability for consultation and/or involvement in the interactive process could be beneficial, especially considering the parent's confrontational tendencies.

Regarding the emails, the court can take into account the lack of good faith effort on the part of this parent to engage with the court in a productive manner. While the ADA/504 coordinator may initially attempt to sort through the numerous massive correspondences to identify accommodation requests, this may eventually become an undue administrative burden. In such cases, again, the court may opt to utilize a third party knowledgeable professional to facilitate an interactive process between the parent and the court. Additionally, disability-related documentation may be necessary to establish if the individual is covered under the ADA and if there is a nexus between the disability and the barrier removal request. If the situation escalates to a severe level, the court may need to consider direct threat and address this appropriately (refer to the chapter *Direct Threat* within this Guide for additional information).

Recognizing the complexity of this situation and the potential challenges it poses for the ADA/504 coordinator, judges, and other staff members involved, it is important to acknowledge that the behavior of this court user **may or may not be related to a disability**. Despite this uncertainty, the good faith efforts of court staff will demonstrate their commitment to complying with the ADA to facilitate access for this individual.

**Ultimately**, the court may need to assess whether an undue burden or fundamental alteration is justified and/or determine that **barriers have been addressed** and removed to the greatest extent possible, thereby **allowing the court activity to proceed**.

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*Special Topic: The Value of a Support Person as a Critical ADA Accommodation*

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A support person can be considered a modification to policies, procedures, and rules. If set up with the understanding of what the disability-related obstacles are and how the support person can

contribute to overcoming these hurdles, this accommodation can be a viable way to mitigate justice barriers. This accommodation may be simple and straight forward or be involved and somewhat complicated requiring considerable effort to initiate and implement to ensure effectiveness.

A support person may be needed for many reasons depending on what the court activity involves and the individual's disability. This accommodation is very helpful for court users with disabilities participating in activities such as judicial proceedings, family services, therapeutic justice, mediation, victim/witness assistance, and more. This accommodation should prove effective for both the individual and the court. Importantly, providing a support person does not create special advantages to court users with disabilities; rather, it can help **level the playing field**, enabling individuals with disabilities to navigate what can be a complex, and at times, an inaccessible court system.

### **Terminology for This Role Can Vary**

This accommodation can be referred to by different labels, such as support person, communication assistant, personal assistant, helper, professional assistant, or companion. What this accommodation is **not** is an advocate, guardian, or representation lawyer.

### **Who May Need a Support Person as an Accommodation**

Examples can include, but are not limited to, a wide range of psychiatric conditions, dementia, learning and intellectual disabilities, brain injuries, attention deficit/hyperactivity, post-traumatic stress, anxiety related conditions, autism, and conduct disabilities (referring to a group of serious emotional and behavioral problems commonly observed in children and adolescents).

Other impairments, such as cancer or multiple sclerosis, may involve cognitive limitations such as difficulties in thinking, remembering, concentrating, or fatigue. A support person can assist by helping the individual focus on the purpose of the activity and offering practical assistance in following dialogues, remembering concerns to be addressed, and taking notes.

Some disabilities may be **hidden** or not easily detectable, but justice barriers exist. Other disabilities can be more **obvious**, and barriers are more readily apparent. According to the Center for Disease Control and Prevention publication, [The Mental Health of People with Disabilities](#), adults with disabilities report experiencing frequent mental distress almost five times as often as adults without disabilities.<sup>46</sup> This can include individuals who have difficulty managing emotions, stress, or anxiety and who may require a support person to help them stay calm and ensure they comprehend what is happening so they can adequately respond in their best interests.

### **Determining If a Court User Needs a Support Person**

Shift the focus from diagnostic labels to **functional needs** when considering access. Individuals with the same disability can experience vastly different barriers. The approach should involve

identifying, through the interactive process with the individual and, where appropriate, their significant others, what is needed for them to fully participate in the court activity.

For instance, with respect to a witness with co-occurring conditions of autism and a psychiatric disability, in conducting a functional needs assessment, it becomes crucial to understand if and how their disabilities might impact their testimony. Will their disabilities affect their ability to perceive, communicate, or recall events, particularly if they feel frightened or stressed? In such cases, could the presence of a trusted support person providing real-time assistance in a specified way enable them to give clearer testimony?

A second example would be if a court user, due to autism or an intellectual disability, tends to automatically acquiesce to perceived authority and accepts whatever options are suggested to them. In such cases, a support person can assist them in understanding each option and create a safe environment where the individual feels empowered to make decisions independently.

### **Need for Documentation**

In some instances, it may be necessary to obtain medical, psychiatric, or other types of documentation to better understand how to create access as it **relates to a court user's functional needs**. However, such information must be directly applicable to the individual and relevant to the specific court activity. For instance, consider a witness who is on the autism spectrum. An observed behavior in autism can be the tendency to consistently acquiesce to perceived authority figures. An assessment, conducted through an interactive process and supported by appropriate medical documentation, could help determine if this specific individual exhibits this disability-related behavior and whether their particular court activity is conducted in a manner that could present barriers, thus requiring accommodations.

### **Who Can Be a Support Person?**

The selection of a support person depends on various factors, including the unique characteristics of the individual court user regarding their personality, preferences, and individuality, along with their specific disability manifestations, the nature of the court activity, potential disability-related barriers, and the expertise required to provide an effective accommodation. This support person could be a significant other, such as a family member, a peer who has successfully faced similar challenges, or a professional such as a person from a disability organization, a social worker, a psychologist, a case manager, or a specialist in the specific disability of the individual.

### **How Can a Support Person Help Remove Barriers?**

For example, a support person as an accommodation can:

- Ensure that the court user fully understands the purpose of the court activity.
- Help the court user maintain full focus during the court activity.

- Provide comfort to help ensure calmness, allowing the court user to sit quietly when needed.
- Assist in easing apprehension and anxiety, ensuring that the court user remains fully aware of what is happening.
- Alleviate the high tension of alienation, being outnumbered, overwhelmed, and nervous, enabling the court user to focus and fully participate.
- Serve as an asset in facilitating and communicating information to the court user, fostering comprehension.
- Aid the court user in following dialogue, remembering concerns to be addressed, and taking notes.
- Ensure that any consequences and options are understood by the court user.
- Detect signs of confusion and help clarify any misunderstandings.
- Identify and report disability-related barriers that may unexpectedly arise during the court activity.

### **Instituting the Accommodation of a Support Person**

The utilization of a support person as an accommodation **requires a structured and deliberate approach** to ascertain its effectiveness in facilitating access to court activities. This process begins by initiating the interactive process with the individual, potentially involving their significant others if appropriate. If a third party is making the request, involving the individual with a disability in the interactive process as much as possible is essential and respectful.

Through this process, identify aspects of the court activities that could be or are inaccessible to the court user. If needed, consider consulting with and/or bringing in knowledgeable third parties to aid in the process. Identify the ADA requirements applicable which include policy modification, effective communication, and physical barrier removal.

Following this, evaluate the effectiveness of a support person in addressing identified barriers to provide equal opportunity and participation of the court user.

In assessing whether a support person would be an effective accommodation consider the following:

- The **specific role** the support person will play in removing identified barriers.
- The **behaviors or actions** the support person will undertake to facilitate barrier removal.
- Determining the most **suitable individual** to serve as the support person.

### Arranging the Accommodation

When coordinating the accommodation, ensure the support person is involved from the outset, when possible. During this process, effectively communicate the accommodation details to both the court user and the support person. Consider the following when setting up this accommodation:

- Ensure clear communication by the court with both the court user and the support person.
- Use plain language instead of technical legal terms or jargon, when needed.
- Be prepared to repeat information and explain concepts more than once, if necessary.
- Provide written instructions, if helpful.
- Utilize visual or other communication aids, if needed.
- Visit the location where the activity will occur to explain what to expect.
- Discuss the court activity in detail, including how the court user will participate, and the role descriptions of the individuals involved.
- Ensure privacy for matters the court user may not wish to share with others, including their support person.

### Clearly Specifying the Role of the Support Person

- Define the **specific behaviors** the support person is authorized to engage in to facilitate access. Break down these behaviors to identify their exact nature and implications. It may be helpful to list them in bullet form.
- Provide explicit clarity on the support person's responsibilities in creating access, ensuring they **do not exceed their role** and inadvertently influence the court user's actions or statements.
- Outline **prohibited behaviors** by the support person and consequences if these behaviors occur so that a fundamental alteration of the activity does not occur.
- Instruct the support person on appropriate **actions** to take if they **become aware** of remaining **barriers** during the court activity.
- Explain any additional accommodations being implemented and how they **collectively remove barriers**, ensuring the support person understands their role in the cohesive approach.
- Emphasize the **ultimate goals** of what should be accomplished for the court user.
- Ensure the support person is informed that they may be exposed to private information while in the role of support person and that they must maintain this information as **confidential**.

### **Appropriate Parties Must Be Informed**

Ensure that relevant parties such as judicial officers, defense attorneys, public defenders, prosecutors, clerks of court, bailiffs, security personnel, court program directors, and other appropriate individuals, fully understand the details of this accommodation in the specific court activity. Take steps, when necessary, to secure agreement on using a support person as an effective accommodation, as its success can be quickly derailed by key individuals involved in the court activity. It is the court's responsibility to ensure the uninterrupted implementation of the approved accommodation, preventing any court party from interfering.

Do **not discontinue** the support person accommodation during the activity simply because the court user appears to be managing adequately on their own.

### **Support Person Policies**

Care must be taken to ensure that policies do not prevent individual assessments or the implementation of tailored accommodations, while also avoiding fundamental alterations to the activity. With the ADA, one size does not fit all. Policies and procedures should emphasize flexibility to remove disability-related barriers and enable equal participation. The elements of this chapter can be incorporated into a flexible support person policy.

### **Awareness and Education**

To ensure access to justice for individuals with I/DD, psychiatric conditions, autism, and other related or co-occurring disabilities, it is imperative to provide adequate support, including the accommodation of an effective support person.

This begins with comprehensive education for court staff to **deepen** their **understanding** of these conditions and **dispel misconceptions**. This can be achieved through various means such as workshops, seminars, informational materials, and community relationships (refer to the chapter *Extensive Resources* within this Guide for additional information). It is essential to address any biases or discomfort that staff may have when interacting with individuals who are neurodivergent, with behaviors that may not be well understood. Practicing empathy and respect involving active listening, patience, and a non-judgmental attitude is paramount in fostering an engaging environment within the justice system.

**Building ongoing relationships** with disability communities, including individuals with these conditions, their significant others, state and local governments and community organizations that serve these populations, is essential. These partnerships provide invaluable insights for effectively implementing a support person as a reasonable accommodation.

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### *Extensive Resources*

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This section is divided into the following categories, each designed to provide access to resources which also can often generate additional useful resources.

- U.S. Department of Justice and U.S. Access Board
- National Organizations Focused on Court System Reform
- Disability Resources and Networks for Knowledge and Assistance: National, State, and Disability-Specific National Resources
- Selected Publications

#### **U.S. DEPARTMENT OF JUSTICE AND U.S. ACCESS BOARD**

##### Office for Access to Justice (OAJ)

The DOJ's standalone Office for Access to Justice works to break down barriers to the founding principle of equal justice under law. Its mission is to ensure access to the promises and protections of civil and criminal legal systems for all communities. The OAJ plans, develops, and coordinates the implementation of access to justice policy initiatives that are of high priority to the Department and the Executive Branch.

OAJ's fact sheet [Access to Justice is DISABILITY ACCESS](#)<sup>47</sup> addresses the advancement of access to the protections of the American legal system for persons with disabilities.

##### Office of Justice Programs, Bureau of Justice Assistance (BJA)

The DOJ Office of BJA strengthens the nation's criminal justice system and promotes a fair and safe criminal justice system. BJA focuses its programmatic and policy efforts on providing a wide range of resources, including training and technical assistance, to law enforcement, courts, corrections, treatment, reentry, justice information sharing, and community-based partners to address chronic and emerging criminal justice challenges nationwide.

BJA's November 2002 Program Brief [Strategies for Court Collaboration With Service Communities](#)<sup>48</sup> addresses the development of these innovative programs. The Brief does not specifically address the issue of disability inclusion, but this can be considered within the Brief's promising components of an effective service coordination strategy.

##### U.S. Department of Justice ADA website

The DOJ ADA website encompasses a wide variety of information to aid in learning about and understanding rights and responsibilities under the ADA.

DOJ's [State and Local Governments: First Steps Toward Complying with the Americans with Disabilities Act Title II Web and Mobile Application Accessibility Rule](#),<sup>49</sup> [Accessibility of Web](#)

[Content and Mobile Apps Provided by State and Local Government Entities: A Small Entity Compliance Guide](#),<sup>50</sup> and [Webinar: Americans with Disabilities Act Title II Web & Mobile Application Accessibility Rule](#)<sup>51</sup> are helpful guidance's in complying with the final rule.

DOJ's guidance on [The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#)<sup>52</sup> provides a comprehensive approach regarding prioritizing prevention, enforcement, and treatment, including how the ADA can protect individuals with Opioid Use Disorder from discrimination.

DOJ's and Health and U.S. Department of Human Services publication [Protecting the Rights of Parents and Prospective Parents with Disabilities](#)<sup>53</sup> outlines relevant civil rights laws, offers answers to specific questions, provides implementation examples, and includes resources for further information.

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

The Board is an independent federal agency that 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 and provides technical assistance and training to ensure that facilities, products, and services are accessible to people with disabilities in compliance with federal laws.

U.S. Access Board publication [Justice for All: Designing Accessible Courthouses](#)<sup>54</sup>, prepared by the Courthouse Access Advisory Committee, has useful information on ways to facilitate and increase accessibility of judicial facilities, including examples of accessible courthouse design.

### **NATIONAL ORGANIZATIONS FOCUSED ON COURT SYSTEM REFORM**

#### [Disability Justice Resource Center](#) (DJRC)

An online resource for legal professionals, continuing legal education courses, law schools, students and others dedicated to protecting the rights of people with developmental disabilities.

Posted on the DJRC's website is the article [Defendants With Autism Spectrum Disorder In Criminal Court: A Judges' Toolkit](#)<sup>55</sup> for the judiciary on defendants with Autism Spectrum Disorder (ASD), providing judges with knowledge, evidence, and resources to recognize and understand ASD symptoms. It aims to help judges better evaluate diagnosed defendants and their behavior, make informed procedural and sentencing adjustments, and ensure more appropriate legal outcomes for defendants with ASD.

#### [Institute for the Advancement of the American Legal System](#) (IAALS)

IAALS is a national, independent research center at the University of Denver. IAALS examines how the American civil justice system can better serve the needs of all. Through purposeful

collaboration, listening, and research, they catalyze groundbreaking and achievable solutions that will clear a path to justice for everyone.

#### [National Center for Access to Justice](#) (NCAJ)

The NCAJ is working to bring rigorous, principled research and analysis to the task of advancing progress toward a fairer justice system and a more just society. They identify policy solutions to complex problems, assess how the states measure up against those benchmarks, and support changes in the law to make those solutions a reality. Their principles include that all people should have access to justice, involving a meaningful opportunity to be heard, secure one's rights, and obtain the law's protection.

The NCAJ [Index](#)<sup>56</sup> is an online, data-intensive ranking system based on thorough research. It rates all 50 states, the District of Columbia, and Puerto Rico on the extent to which they have implemented certain best policies for access to justice, including those addressing court users with disabilities.

#### [National Center for State Courts](#) (NCSC)

As an independent, nonprofit organization, the NCSC has shared authoritative knowledge and expertise to address current and emerging issues and trends in state court administration. Its mission is to promote the rule of law and improve the administration of justice. The NCSC can identify and respond to evolving needs, deploying resources when and where courts need them. These resources include webinars, on-site or remote technical assistance, education and training, and direct consulting.

NCSC's publication [Accessible Documents and Web Content for Courts: A Short Introduction](#)<sup>57</sup> helps courts identify common accessibility problems with documents and web content and provides courts with tools that can help ensure documents and web content are accessible.

NCSC's publication [Jurors With Disabilities](#)<sup>58</sup> covers ADA requirements and practical information regarding including people with disabilities in the jury process.

Operated by NCSC, the COSCAACCESSIBILITY listserv is a place for state court ADA coordinators at all court levels to ask questions of other ADA Coordinators and share information and resources related to disability access and the courts. This is a closed group for state court ADA coordinators and other state court staff who work on access issues. To join the listserv, send a request to Grace Spulak at [gspulak@ncsc.org](mailto:gspulak@ncsc.org).

#### [NCSC Justice for All Project](#)

This initiative addresses the needs of not only those already in the court process but also people with unmet civil legal problems who could benefit from legal help. Housed at the NCSC and operating in partnership with the Self-Represented Litigation Network (SRLN), the initiative offers a

framework for engaging with a wide range of stakeholders to systematically expand access to justice. Through broad collaboration, it ensures there is no wrong door through which to enter the civil justice system.

#### [State Justice Institute](#) (SJI)

The SJI was established by federal law in 1984 and awards grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

### **DISABILITY RESOURCES AND NETWORKS FOR KNOWLEDGE AND ASSISTANCE**

#### **National Resources**

#### [ADA National Network-Information, Guidance & Training on the Americans with Disabilities Act](#)

The ADA National Network, which includes the Southwest ADA Center, the organization with which the author of this publication is affiliated, consists 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 technical assistance and training is confidential.

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

The ADN is found within the U.S. Department of Health and Human Services and 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.

#### [American Civil Liberties Union Disability Rights Webpage](#) (ACLU)

The ACLU works in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in the United States. This includes striving for an America free of discrimination against people with disabilities, where they are valued, integrated members of society with full access to education, homes, health care, jobs, voting, and beyond.

#### [University of Michigan Civil Rights Litigation Clearinghouse](#)

The Clearinghouse is an online database that provides comprehensive information and resources on civil rights lawsuits. The aim is 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.

### [Coelho Center](#)

The Coelho Center at Loyola Law School represents all schools and colleges within Loyola Marymount University. Its mission and areas of focus are to collaborate with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. Among its numerous key initiatives is creating a **pipeline of lawyers with disabilities** to populate the bar and bench and hold elected office. The Center focuses on breaking down barriers for those with disabilities who aspire to legal careers, public policy roles, and political positions.

### [G3ict: The Global Initiative for Inclusive ICTs](#)

The G3ict's mission is to build a global community to advance the fundamental human rights of persons with disabilities to digital access.

G3ict's [Inclusive Courts Checklist](#)<sup>59</sup> includes 10 core capabilities that courts should develop to support a digital transformation that is accessible. It provides 36 specific steps for developing these 10 core digital capabilities to support greater access to justice for persons with disabilities.

### [Job Accommodation Network](#) (JAN)

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's website can also provide valuable assistance in identifying and addressing barriers in other various situations.

### [National Council on Disability](#) (NCD)

The Council is an independent federal agency and is composed of nine members, four appointed by leadership in Congress and five appointed by the President. NCD provides advice to the President, Congress, and executive branch agencies to advance policy that promotes the goals of the Americans with Disabilities Act – equality of opportunity, economic self-sufficiency, independent living, and full participation in all aspects of society – regardless of type or severity of disability.

NCD's report [Breaking the School-to-Prison Pipeline for Students with Disabilities](#)<sup>60</sup> addresses the Individuals with Disabilities Education Act (IDEA), racial disparities in special education, data collection enforcement and expansion, and other federal laws impacting students with disabilities.

NCD's report [Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children](#)<sup>61</sup> aims to enhance understanding and support the rights of parents with disabilities and their children. It offers an in-depth review of the barriers faced by people with various disabilities, including intellectual and developmental, psychiatric, sensory, and physical disabilities, in exercising their fundamental right to establish and maintain families. The report also highlights the persistent, systemic, and pervasive discrimination against parents with disabilities.

### [2010 Standards ADA Checklist for Readily Achievable Barrier Removal](#)<sup>62</sup>

The checklist follows the four priorities in the DOJ's ADA Title III regulations (businesses and nonprofit organizations that provide goods to or serve the public). **These priorities are equally applicable to state and local government facilities.**

**Note:** This checklist does not cover requirements for nondiscriminatory policies and practices or the provision of auxiliary aids and services necessary for effective communication. As it does not include all of the 2010 Standards, it is not intended to determine compliance for new construction or alterations.

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

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.

[SAMHSA - Medications for Substance Use Disorders](#)<sup>63</sup> provides 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.

### [Telecommunications Relay Service - TRS | Federal Communications Commission](#)

TRS ensures equal communication access to telephone and video services for people who are Deaf, deaf-blind, hard of hearing, and have speech-related disabilities. TRS providers must ensure user confidentiality, and no records of conversations are made. The service allows hearing callers to communicate with relay users and includes Text-to-Voice TTY-based TRS, Voice Carry Over, Speech-to-Speech Relay Service, Captioned Telephone Service (including Internet Protocol), and Video Relay Service (VRS).

### [World Institute on Disability](#) (WID)

WID brings together their knowledge and skills to give customers world-class consulting, training and technical assistance services. WID addresses and influences systems, policies, and tools to remove barriers, so people with disabilities are fully included in all aspects of life. Their programs include focusing on U.S. federal, state, and local systems and agencies.

WID's article [Moving From Disability Rights to Disability Justice](#)<sup>64</sup> builds on the disability rights movement, taking a more comprehensive approach to help secure rights for disabled people by recognizing the intersectionality of people with disabilities who belong to additional marginalized communities.

### [W3C: Web Accessibility Initiatives](#) (WAI)

The World Wide Web Consortium (W3C) develops international standards for the Web, such as HTML, CSS, and more, to make it more accessible to people with disabilities. The WAI offers strategies, materials, and supporting resources to help organizations understand and implement accessibility. These resources can be used to make websites, applications, and other digital creations more accessible and usable for everyone.

### [Web Accessibility In Mind](#) (WebAIM)

The Institute for Disability Research, Policy, and Practice at Utah State University offers various services to establish and improve organizational accessibility programs. These services include training in web, document, Zoom, and strategic accessibility; direct technical assistance; tools and processes to help organizations incorporate accessibility in technology purchasing or usage; and providing reports to assess the accessibility level of the organization's website.

## **State Resources**

### [Association of Assistive Technology Act Programs](#) (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](#).

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

CILs are community-based, cross-disability, nonprofit 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.

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

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.

### [State Agencies for Developmental Disabilities](#)

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.

## Disability-Specific National Resources

### [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.

### [ASERT](#)

ASERT (Autism Services, Education, Resources and Training) is a partnership of medical centers, centers of autism research and services, universities, and other providers involved in the treatment and care of individuals of all ages with autism and their families. ASERT brings together resources locally, regionally, and statewide.

ASERT's publication [Judge's Guide to Autism](#)<sup>65</sup> is intended to serve as a resource for judges involved with criminal justice/autism initiatives in their communities and is divided into seven parts: Summary, Acronyms, Treatments and Supports, Medications, Diagnoses, Frequently Asked Questions, and Resources.

### [Autism and the Courts](#) (Unified Judicial System of Pennsylvania)

The Autism and the Courts initiative is a statewide movement focused on reducing trauma and supporting individuals in the court system with an autism spectrum disorder (ASD). It includes extensive information for justice professionals.

### [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 Speaks | Education & Resources](#)

Autism Speaks is dedicated to creating a world where individuals with autism can fully participate in their communities throughout their lives. They achieve this through advocacy, services, supports, research, innovation, and advancements in care for autistic individuals and their families.

### [Autism Spectrum News](#) (ASN)

ASN, published by the nonprofit organization Mental Health News Education, began as a quarterly print publication in 2008. ASN was developed to provide the autism community with a trusted source of evidence-based information and education, the latest in scientific research, clinical treatment best practices, family issues, advocacy, and vital community resources.

ASN Policy Brief: In April 2022, the Global Autism and Criminal Justice Consortium, led by the Policy and Analytics Center at the AJ Drexel Autism Center, Drexel University, released [Advocating for the Overlooked Needs of Autistic Individuals in the US Criminal Justice System](#).<sup>66</sup> The report was

developed following a world summit held in October 2020, which addressed the increasing rate at which individuals with autism encounter criminal justice systems globally. The brief outlines recommendations for changes in the US criminal justice system as well as systems worldwide.

#### [Autistic Self Advocacy Network](#) (ASAN)

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.

#### [Brain Line](#)

This national multimedia project offers authoritative information and support for those affected by brain injury or PTSD, including individuals, their families, and professionals. Through videos, webcasts, articles, personal stories, research briefs, and news, users can learn about symptoms, treatment, rehabilitation, and family issues resulting in support and ideas.

Posted on BrainLine: Traumatic Brain Injury: A Guide for Criminal Justice Professionals<sup>67</sup> is by the Centers for Disease Control and Prevention and serves as a resource for criminal justice professionals on understanding and addressing the needs of individuals with traumatic brain injury (TBI) who are involved in the criminal justice system. It covers topics such as the impact of TBI on behavior and cognition, methods for identifying and assessing TBI, appropriate responses and accommodations, and strategies for community reintegration. The goal is to promote fair and effective interactions with these individuals, ensuring they receive justice and appropriate care within the criminal justice system.

#### [Decriminalize Developmental Disabilities](#) (D3)

D3 consists of government employees, university researchers and professors, psychologists, law enforcement officers, attorneys, and authors. They stand for the reform of injustices in the criminal justice system with regard to the vulnerable population of individuals with intellectual and developmental disabilities. Their mission is to ensure equal access to justice, ADA accommodations and effective education and treatment for defendants with I/DD who are involved with the criminal justice system.

#### [Hadley Vision Resources | 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.

### [National Alliance on Mental Illness](#) (NAMI)

NAMI, the nation's largest grassroots mental health organization, is dedicated to improving the lives of millions of Americans affected by mental illness. Their alliance includes over 700 NAMI State Organizations and Affiliates across the country, working to raise awareness and provide support and education to those in need.

### [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.

### [National Deaf Center](#) (NDC)

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 do not know sign language. They also have information on working with interpreters and real-time captioning.

The NDC Tip Sheet [Sign Language Interpreters: An Introduction](#)<sup>68</sup> covers the complexities of the task, the types of visual interpreting, and the vast range of qualifications brought by the interpreter.

### [National Institute on Deafness and Other Communication Disorders](#) (NIDCD)

NIDCD is a research institute within the National Institutes of Health that conducts and supports research on communication related disabilities, 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.

### [The Arc National Center on Criminal Justice and Disability](#) (NCCJD)

The NCCJD acts as a link between the criminal justice system and the disability community. NCCJD aims to ensure safety, fairness, and justice for people with intellectual and developmental disabilities, particularly those with hidden disabilities and marginalized identities such as victims, witnesses, suspects, defendants, and incarcerated persons.

### [NCCJD's Pathways to Justice](#)

Pathways to Justice is an initiative of NCCJD and 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 NCCJD 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, developmental, and other disabilities.

### [The Arc's State and Local Chapters](#)

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 community inclusion and quality of life for individuals with I/DD.

### [Understanding Intellectual and Developmental Disabilities in People Involved with the Criminal Justice System Archived Webinar](#)<sup>69</sup>

People with different behavioral health disabilities have varying needs, especially when involved with the criminal justice system. The National Center on Criminal Justice & Disability's archived training discusses the differences and similarities between behavioral health diagnoses and I/DD, how to identify individuals with I/DD, and tips for working more effectively with them. Although the training focuses on correctional settings, this knowledge can also assist courts in creating better access for people with I/DD.

### [University Centers for Excellence in Developmental Disabilities](#) (UCEDD)

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

## **SELECTED PUBLICATIONS**

### [Autism and the Criminal Justice System: Policy Opportunities and Challenges](#)<sup>70</sup>

The [International Society for Autism Research](#) underscores the critical need to prioritize research and policy initiatives aimed at preventing, reducing, and enhancing interactions between autistic individuals and the criminal justice system. The Global Autism and Criminal Justice Consortium advances policy recommendations across all facets of the justice system, traditionally disjointed, utilizing an adapted Sequential Intercept Model (SIM). This revised model delineates a cyclical process illustrating how autistic individuals, both as victims and offenders, navigate through the various stages of the criminal justice system.

### [Criminal Legal Systems and Disability Community: An Overview](#)<sup>71</sup>

This paper provides a historical overview of the involvement of people with disabilities in the criminal legal system, examines the prevalence of disability within the system, and explores the unique ways disabled individuals are impacted. It concludes with recommendations for social work practice and advocacy grounded in principles of disability justice.

[Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: A Scoping Review](#)<sup>72</sup>

The RAND Corporation is a nonprofit institution that helps improve policy and decision-making through research and analysis. A Scoping Review, published Nov 30, 2023, presents the findings of a review assessing the current state of literature and policy related to individuals with physical, intellectual, and developmental disabilities who interact with the legal system, with the goal of identifying priorities for future research related to these populations.

[Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: A Proposed Agenda for Future Research](#)<sup>73</sup>

In this RAND report, the authors triangulate the findings of the scoping review and qualitative interviews with stakeholders, garnering input from an advisory board of people with professional and/or lived experience, to propose a research agenda to steer researchers in their exploration of concerns related to individuals with disabilities and their interactions with the legal system.

[Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: Perspectives from People with Relevant Experience](#)<sup>74</sup>

In this RAND report, the authors explore the experiences of people with various disabilities who have navigated the civil and criminal legal systems in the United States. Drawing on firsthand experiences of professionals, practitioners, family members, and people with lived experience, the authors' findings highlight challenges with disability accommodations across legal system settings, as well as opportunities to investigate research and practice gaps.

[The Right of Blind People to Serve on Juries Comes to the Court](#)<sup>75</sup>

The October 2019 Blind Monitor issue reported that the National Federation of the Blind, the National Federation of the Blind of Massachusetts, and the Disability Law Center submitted a brief pursuant to the Massachusetts Court's solicitation of amicus briefs on April 16, 2019. The brief argued that blind Massachusetts citizens can competently and meaningfully contribute to juries and should be given the opportunity to do so. Such a holding would align Massachusetts courts with federal law, state law, and relevant case law recognizing the too-often ignored capabilities of blind Americans.

[Transformative Justice for Elimination of Barriers to Access to Justice for Persons with Psychosocial or Intellectual Disabilities](#)<sup>76</sup>

By adopting the Convention on the Rights of Persons with Disabilities (CRPD), the United Nations heralded a new epoch on how disability-related matters ought to be comprehended and addressed across the globe. The aim of this article is to argue the role and substance of the CRPD, under which each State Party has a responsibility and duty to protect, promote and implement access to justice for all persons with disabilities on equal bases with others.

## Victims, Witnesses, and Defendants - A Guide for Prosecutors<sup>77</sup>

This Guide, created by [The Arc](#), [NAMI](#), and the [Prosecutors' Center for Excellence](#), offers prosecutors valuable information and strategies to help them work effectively with individuals who have intellectual and developmental disabilities (I/DD) or mental illness.

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The information herein this Guide is intended solely as informal guidance and is neither a determination of legal rights or responsibilities, nor binding on any agency with enforcement responsibility under the ADA or any other law.