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Research in Action

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The Americans With Disabilities Act and Criminal Justice: Providing Inmate Services

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Title II of the Americans With Disabilities Act (ADA) requires that State and local governmental entities, regardless of size, provide equal access for persons with disabilities to programs, services, and activities of the entity, as well as to employment opportunities. The ADA covers criminal justice agencies, including corrections facilities, operated by or on behalf of State and local governmental entities.

The ADA affects how employees for sworn and unsworn positions are hired in the corrections field. The law also affects the delivery of programs, services, and activities offered to inmates and their visitors—family members, attorneys, clergy, or any other person having a legitimate reason to visit an inmate. Moreover, the ADA applies not only to the mandatory programs that agencies are required to offer inmates, but also to any voluntary programs the facility may provide.

This Research in Action report, the third in a series on the Americans With Disabilities Act published by NIJ, explores the implications of Title II of the ADA for inmate programs and services. The Department of Justice (DOJ), one of eight Federal agencies responsible for enforcing the ADA, is designated to investigate, among other

things, complaints involving law enforcement, public safety, and correctional institutions. During the first 9 months the ADA was in effect, 272 complaints were retained by DOJ for alleged violations of this new law.¹ The single largest number of complaints retained for investigation by the Department were employment-related, with prisons and law enforcement the main focus.² The second largest number of those complaints involved inaccessible facilities or programs in prisons and courthouses.³

Title II: legal overview

Title II makes it illegal to discriminate against qualified individuals with disabilities.⁴ Under the law, a person has a disability if he or she suffers from a physical or mental impairment that substantially limits a major life activity, such as seeing, hearing, walking, talking, breathing, sitting, standing, or learning. A person will also be considered disabled, for purposes of this law, if there is a record of such an impairment or if he or she is perceived or regarded as having such an impairment. Those associated with a person with a disability are also entitled to certain protections.

To be covered by Title II of the ADA, a person must meet the definition of a “qualified individual with a disability.” Such a person is defined as “...an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

Essential eligibility requirements. The essential eligibility requirements for receiving many of the services delivered in a correctional facility and for participating in many prison program activities may be minimal. For example, if certain types of offenders are entitled or required to attend counseling sessions, then having committed the offense in question may be the only eligibility requirement for attending the counseling sessions.

On the other hand, if a prison offers advanced educational opportunities, the requirement that a prisoner have completed the educational prerequisites to advanced classes is a legitimate eligibility requirement that does not discriminate on the basis of disability.

Highlights

NIJ's initiative to examine the implications of the Americans With Disabilities Act (ADA) for criminal justice agencies at the State and local levels was created to respond to the need for understanding of the Act in the criminal justice field and the new opportunities it offers persons with disabilities. This Research in Action, the third in a series designed to explain how the Americans With Disabilities Act (ADA) will affect the criminal justice system, focuses on providing services to inmates.

Compliance with the ADA affects the delivery of programs, services, and activities offered to inmates and their visitors, including family members, attorneys, clergy, counselors, and probation/parole officers. Inmates and visitors must be provided access to any program, service, or activity to which inmates and visitors without disabilities have access. Key highlights include:

- It is critical for administrators to develop written policies and procedures consistent with the ADA and have them in place before a problem arises.
- Reasonable modification of policies, practices, and procedures is necessary to avoid screening out inmates with disabilities from participating in programs and receiving services.
- Correctional facilities must provide "program access," i.e., ensuring that each service, program, or activity is readily accessible to and usable by individuals

However, as indicated in the definition of "qualified individual with disability," whether or not an inmate meets essential eligibility requirements for a particular program or activity is a decision that requires corrections administrators to evaluate that facility's rules, policies, and practices; architectural, communication, and transportation barriers; and policies for providing auxiliary aids and services. Administrators also must assess the impact of each on the ability of a prisoner to par-

with disabilities. This standard must be applied to architectural features and all new construction and alterations to existing structures.

- Effective auxiliary aids (e.g., assistive listening systems, TTD's, qualified sign language interpreter, recorded books, and books in braille) must be provided to inmates where necessary to give them equal access to the facility's programs, services, or activities.
- Classification decisions (e.g., determining least restrictive custody) should be based solely upon risk factors relevant to the facility where the inmate is incarcerated.
- In general, ADA requirements do not apply when their exercise would fundamentally alter the nature of the program, service, or activity *or* create an undue financial or administrative burden. Undue burden can mean a significant expense or difficulty or a disruption or fundamental alteration of the nature of the activity.
- Eligibility requirements for such activities as education programs, drugs and alcohol counseling, work programs, and boot camps that eliminate or tend to eliminate inmates with disabilities may not be imposed unless it can be shown that such requirements are necessary for the provision of the service.

These issues and their implications are detailed in this Research in Action.

ticipate in programs, services, and activities conducted by the facility.

General guidance. The basic requirements of the ADA, as applied to providing inmate services, are discussed below. In applying these requirements, administrators should keep in mind some general guidance.

First, providing equal access to the facility's programs, services, or activities will never require the corrections agency to

create a direct threat to the safety of others. The law defines direct threat of serious harm as a "significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation." Such a determination must be predicated on objective evidence; speculative or remote threats will not suffice.

Second, because integration into the mainstream of society is a cornerstone of the ADA, services, programs, or activities that segregate persons with disabilities should be avoided.⁵ A government agency such as a jail, detention center, or prison may, however, offer a separate or special program "when necessary to provide individuals with disabilities an equal opportunity to benefit from the programs."⁶ So, for example, it may be permissible for a prison to sponsor a separate basketball league for inmates who use wheelchairs.

Policies and procedures. In evaluating services, administrators should ask: Are there policies, practices, or procedures that screen out inmates with disabilities from participating in programs? If the answer is "yes," reasonable modification to those policies or procedures may be necessary to avoid discrimination. Modifying a policy, practice, or procedure will not be required, however, if doing so would fundamentally alter the nature of the service, program, or activity.

Fundamental alteration of a program may occur when the modification is such that it changes the very nature of the program so that the facility would, in effect, be offering a different kind of program. For example, if a prison offers courses for college credit that require certain prerequisite courses not offered on the premises, the facility would not be required to offer them to inmates with disabilities who had not taken these prerequisite courses. To require the facility to offer such prerequisites would, in effect, require it to offer a completely different course.

Architectural barriers and "program access." The second aspect for evaluation under Title II involves access. A public

entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. Contrary to common belief, however, the ADA does *not* require that correctional institutions retrofit all their existing facilities to a new ADA standard. What the ADA *does* require is that a facility operate each service, program, or activity it offers so that, when viewed in its entirety, the service, program, or activity is readily accessible to and usable by individuals with disabilities. This standard, known as “program access,” applies to all new construction and alterations to existing structures.

As a practical matter, corrections administrators will need to evaluate each service, program, and activity conducted at or offered by their institutions. If, when viewed in their entirety, these services, programs, or activities are not physically accessible to inmates with disabilities, then alternative methods of providing access should be considered.

Achieving program accessibility may mean relocating services and activities from an inaccessible site to one that is accessible, redesigning equipment, providing auxiliary aids for disabled beneficiaries of city correctional programs, and altering an existing structure.⁷ The ADA recognizes that total structural access may not be possible and allows for use of “alternative methods of ensuring opportunities to participate in the program.”⁸

Providing program access is not required if it would fundamentally alter the nature of the program, service, or activity, or if it would cause undue financial and administrative burdens on the governmental entity. Undue burden means significant expense or difficulty, and is not limited to money. Undue burden can also mean disruption or fundamental alteration of the nature or operation of the agency. For purposes of determining whether an undue burden would be created, the resources of the entire governmental entity under which the facility

operates is considered and not just the resources of the facility itself.

Communications. The third area in evaluating program access is that of communication. Effective auxiliary aids must be provided to inmates where necessary to give them equal access to the facility’s programs, services, or activities. This requirement does not apply, however, when doing so would fundamentally alter the nature of the program, service, or activity, or cause an undue financial and administrative burden.

A correctional facility must ensure that its communications with individuals with disabilities are as effective as its communications with others. When necessary to provide an individual with a disability an equal opportunity to participate in, and enjoy the benefits of programs, auxiliary aids and services should be provided at the facility’s expense. This provision of the ADA applies only to individuals with hearing, vision, or speech impairments.

For persons who are deaf or hard of hearing, examples of auxiliary aids include assistive listening systems and telecommunication devices for the deaf (TDD’s). Qualified readers and taped texts are examples of auxiliary aids for individuals with vision impairment, and for those with speech impairments, TDD’s and communication boards qualify as auxiliary aids.

The type of auxiliary aid or service necessary to ensure effective communication will vary depending on the length and complexity of the communication involved. In routine matters, for example, the exchange of written notes with a deaf prisoner may be sufficient. However, where communication is more complex, extensive, or significant—for example, during classes, counseling sessions, or disciplinary proceedings—a qualified sign language interpreter may be required.

It is critical for administrators to develop written policies and procedures consistent with the ADA and have them in place before a problem or special need of an

inmate or an arrestee arises. Examples might include having a list of certified sign language interpreters who can be called on short notice, having the necessary number of TDD’s and personnel trained to use them, and making information available to staff on ways to locate books in braille or on tape.

Assessing inmates during intake

Intake is the process during which inmates or arrestees entering the correctional facility are evaluated. In particular, several issues are addressed:

- Risk assessment. Does the arrestee or inmate pose an imminent danger to himself or herself or others?
- Pretrial release. Is the arrestee eligible for pretrial release?
- Medical screening. Does the arrestee or inmate have any infectious diseases or medical conditions requiring immediate attention?
- Classification. What is the appropriate housing assignment for this individual?
- Needs assessment. What is the individual’s interest, ability, and eligibility status regarding participation in the facility’s various programs, services, and activities?

When addressing these issues problems sometimes occur. Evaluations may take place at various times during the intake process and may be conducted by different staff members in separate parts of the jail, prison, or detention center. In addition, not all ADA-defined disabilities are manifest, that is, obvious to the evaluator. Many, including diabetes, cancer, epilepsy, or HIV disease, are hidden or may not have visible symptoms.

How does the ADA affect this vital and necessary part of corrections operations? Here are some suggestions:

- Corrections administrators should keep in mind that information aimed at identifying inmates with disabilities should have a

legitimate purpose in the context of institutional settings. Administrators should obtain information that is genuinely necessary for the safe operation of the facility.

- Avoid using information obtained during intake as a basis for segregating prisoners with disabilities *solely* on the basis of the disability. *Mistakes* in classifying an inmate will not protect the facility from a claim of disability discrimination.

- Disability-related inquiries should include advising inmates of the facility's commitment to compliance with the ADA. Inmates with disabilities should be involved in the process of determining what accommodation to make so as to enable the inmate to participate in the facility's programs, services, or activities.

- Sound prison practices require that all medical information obtained from the prisoner be kept confidential, separate from other prisoner information, and disseminated only on a *need-to-know* basis.

- The facility should have written policies and procedures governing the intake process, and these should be distributed to all intake personnel.

Classification decisions

The classification process determines "the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources."⁹ Classification decisions about an inmate include determining the least

restrictive custody for an inmate. This process should be based solely upon risk factors shown to be relevant to the particular facility where the inmate is incarcerated. Some factors that might be considered include current criminal charge(s), past criminal charges, incidents of escape or attempted escape, and past institutional behavior.

Facilities that have further analysis or documented information on the inmate's behavior might also add such items as prior drug or alcohol use, age, and level of education. It should be noted that drug or alcohol addicts who have successfully completed a rehabilitation program or are currently in a rehabilitation program are considered persons with disabilities under

Questions Most Frequently Asked...

1. Does the ADA apply to corrections facilities?

Yes. Title II of the ADA applies to all public entities including State and local governments and the agencies that operate under their auspices. This includes jails, detention centers, and prisons. This section of the law covers all programs, services, and activities provided by the State or local government through its agencies.

2. Do short-term holding facilities (i.e., less than 1 year) have fewer obligations under the ADA than long-term facilities?

The ADA applies regardless of how long an inmate with a disability remains in custody. However, the length of an inmate's incarceration would certainly be a consideration in evaluating whether or not a modification to a facility's policies, practices, or procedures would fundamentally alter the nature of the service, program, or activity. Remember also that while public entities are not generally required to provide personal devices (for example, wheelchairs or hearing aids) or personal services (for example, attendants), this is not true for correctional facilities and other custodial entities.

3. During an intake evaluation, can an inmate be asked if he or she is HIV positive or has AIDS?

Public entities may not make unnecessary inquiries into the existence of a disability. If it is necessary to know whether an inmate who uses a wheelchair can perform manual work to determine eligibility for inmate work programs, then it might be permissible to ask. However, if asking about this disability is done as a general matter and not in connection with providing services, it could be challenged under the ADA as irrelevant. As a good practice, the agency should also be sure that medical information about inmates, such as their HIV or AIDS status, remains separate and confidential.

4. Is the correctional facility required to provide a sign language interpreter for a hearing impaired inmate who wishes to attend Alcoholic Anonymous (AA) or Narcotics Anonymous meetings? What if the inmate's attendance at these meetings is court-ordered?

Generally, the corrections facility will be required to provide effective communication through auxiliary aids and services that enable the inmate to participate in such meetings in a meaningful way. This is true regardless of whether attendance is mandatory (court-ordered) or voluntary. An inmate cannot be required to pay the

costs of auxiliary aids required by the ADA.

Remember, auxiliary aids that are effective are required. When interacting with deaf or hard-of-hearing inmates, writing notes for short exchanges may be effective, but for interactions such as an AA meeting, disciplinary hearings in which the inmate may lose privileges, participation in the facility's GED programs, or visits with an attorney, interpreters will most likely be more appropriate. Primary consideration must be given to the request of the person with the disability.¹¹

5. Does the ADA require that a law library contain duplicate volumes in braille to accommodate inmates with vision impairments?

Correctional facilities are only required to provide auxiliary aids and services where necessary to enable an inmate with a disability to participate in programs, services, and activities. Doing so will not be required if it fundamentally alters the nature of the program, service, or activity, or if it causes undue financial and administrative burdens on the agency. An undue burden is significant difficulty or expense based on all of the resources available for use in the program. While duplicating an entire library might constitute an undue burden, printing relevant cases or portions of books might be in order. Similarly, it

the law. On the other hand, mere use of drugs or alcohol and related criminal convictions, including possession and sale will not invoke the ADA.

Most classification systems, especially objective systems, include an opportunity for staff to override a classification decision made even when based on objective information. Reasons for overriding an objective classification decision may be information such as mental health concerns, acute medical problems, suicide risk, and detoxification status. Any one of these conditions may make the housing placement decision indicated by objective classification procedures unadvisable. The override process allows for extenuating circumstances and permits case-by-case

determination of an inmate's housing assignment.

Before invoking an override, the ADA should be considered. For example, policies relegating all inmates using wheelchairs to a particular part of the facility may violate the law. Because the ADA seeks to integrate persons with disabilities into the mainstream of society, it may be inappropriate to place all wheelchair users together. While it may be appropriate to place inmates using wheelchairs in first floor locations so they can be evacuated safely in the event of fire, these locations should be scattered among the various first floor housing units to the extent possible.

If an inmate's disability is a factor in making a housing decision, this situation

should be handled during the override phase of the classification process because inmates with disabilities are not routinely housed separately; rather, they are considered on a case-by-case basis. In other words, the same classification process should apply to inmates with disabilities and inmates without disabilities. An override may be used if there is a valid reason for not placing an inmate with a disability in the same housing unit as inmates without disabilities—even when the disabled individual is in the same classification status, i.e., dangerous or suicidal. Valid reasons for segregating inmates with disabilities include the determination that a particular inmate poses a direct threat to the safety of others or has requested to be segregated. It is important that the

might be possible to provide persons to read to visually impaired inmates, or recorded books. Auxiliary aids need only provide equal opportunity to participate in a program, service, or activity. They do not have to be the most expensive accommodation.

6. Would a program that gives credit toward early release based on hard manual labor violate the ADA because it screens out inmates whose disability prevents them from participating in this program?

Probably. This is also a matter for consideration for the "boot camp" programs that are gaining popularity in many States and localities. Remember, this may be a denial of equal opportunity for inmates with disabilities to benefit from participation in this type of program, service, or activity.

One solution is to find another way for inmates who cannot participate in "hard labor" to get good time credit by performing other tasks. For example, inmates with mobility impairments might be able to work as readers for inmates with vision impairments; inmates with vision impairments might be able to earn credit by working in the laundry.

7. Can all inmates with disabilities be put in the same cell block? In other words can I dedicate a corrections facility to per-

sons with disabilities?

Generally, no. Remember, one of the goals of the ADA is to integrate persons with disabilities into the mainstream of society. This includes a community within a society, even a prison community. Inmates with disabilities should be classified and housed the same as inmates without disabilities with the same classification status *unless* housing the inmate in that location would pose a direct threat to the safety of staff or other inmates. Of course, the ADA does not require the integration of vulnerable prisoners who prefer to be segregated.

Inmate classification systems may consider an inmate's disability as an override to change housing location if a threat exists, but disability should not be a primary factor in determining the inmate's classification.

8. May inmates with mobility impairments be put together on the first floor for easy evacuation in case of fire?

Safety issues will permit some flexibility in segregating inmates with disabilities. Although it is possible to keep inmates with mobility impairments in ground floor accommodations for safer evacuation purposes, it is a good idea to integrate these inmates among other inmates on the ground level.

9. Does the ADA give inmates working in correctional facilities rights as employees under Title I?

Probably not. Two Federal courts recently held that inmates working for prison industries were not entitled to minimum wage under the Fair Labor Standards Act. The courts reasoned that there is no employee-employer relationship between an inmate and the correctional facility for which he or she performs hard labor. It would seem that, by analogy, the same could apply to the ADA. However, no court has yet addressed this issue specifically.

10. How does the ADA affect the providing of special education services to inmates over the age of 22?

The ADA does not preempt other Federal or State laws to the extent that those laws meet the ADA requirements or expand upon them. While the ADA was probably never meant to encompass special education, it does require reasonable modifications to be made regardless of the age of the individual.

Remember, any classes offered, whether special education or otherwise, need to be accessible to inmates with disabilities who wish to participate. Access includes physical accessibility; the ability to participate in the program, service, or activity; and effective communication.

justification for an override be based on objective information, not mere speculation. It is a good idea to document all classification decisions as well as any reasons for exercising an override.

Inmate programs

Inmate assessment and classification are not the only areas in which corrections administrators need to be knowledgeable. The ADA has a significant effect on how the facility delivers its programs, services, and activities to inmates with disabilities.

Programs offering high school or college classes, drug or alcohol counseling, art therapy, inmate work programs, work release programs, boot camps, or religious programs must be accessible to inmates with disabilities so that they may participate meaningfully. Eligibility requirements may not be imposed that eliminate or tend to eliminate inmates with disabilities unless it can be shown that such requirements are necessary for the provision of the service.¹⁰

Educational programs. Corrections facilities may establish whatever eligibility requirements are necessary for the provision of the service, program, or activity being offered. For example, a program offering inmates the opportunity to participate in college classes for credit might require the inmate to have a high school diploma or a General Equivalency Diploma (GED). An inmate with a disability who has not completed high school or a GED program might be excluded from this program without violating the ADA.

On the other hand, a facility offering high school equivalency programs may need to modify its policies and procedures to enable inmates with learning disabilities to obtain the GED if they cannot finish high school or get a GED due to the disability.

But what if the facility did not have any high school equivalency programs? Would the ADA require the facility to create such a program to accommodate an inmate with a disability who wants to participate in its college credit program but did not have a

high school equivalency degree? Probably not. This might constitute a fundamental alteration of the program since it would require the facility to offer a different program than college-level classes, i.e., a GED. In most cases, prisons and jails are not required to institute programs for inmates with disabilities, but should focus on making the programs they do offer accessible to inmates with disabilities.

Likewise, a requirement that inmates be able to attend classes in a place that is not architecturally accessible might violate the ADA if an affected inmate wishes to participate. In that case, the facility must relocate the class to an accessible place unless it can show that relocation would result in undue financial and administrative burdens or a fundamental alteration in the nature of the program.

Drug and alcohol treatment. Facilities that offer drug and alcohol rehabilitation through programs such as Alcoholics Anonymous or Narcotics Anonymous should ensure that they are accessible to any inmate wishing to participate. In the case of inmates who are deaf or hard of hearing, this might include making a sign language interpreter available.

Library services. Inmates who are blind or visually impaired should have access to use of the facility's library. This could be achieved by providing books on tape, qualified readers, or books in braille. Creativity can go a long way in accommodating inmates with disabilities. For example, asking other inmates to be readers for a blind inmate might be one way to make the library accessible.

Inmate work programs. Many correctional facilities offer programs in which inmates can earn early release in exchange for work. Often the work involves strenuous physical labor. Obviously, there are inmates with disabilities who cannot perform hard labor. What implications would the ADA have in such a case?

While a corrections facility is free to establish eligibility requirements for a program that has the potential to result in

early release, release from prison or jail constitutes such an important benefit that it may be improper to exclude inmates with disabilities from participating. This may constitute a denial of an equal opportunity to benefit from the program. This example might be one in which corrections administrators would be required to create a program where none currently exists. This is another instance where creativity might go a long way in developing accommodations for including inmates with disabilities. For example, inmates who use wheelchairs may perform work by serving as readers for inmates who are blind or who have a reading disability.

Similarly, facilities should consider the ADA when evaluating "boot camps," or shock incarceration programs. Typically, boot camps offer the opportunity for early release to youthful offenders convicted of certain offenses, in exchange for hard labor and participation in strenuous physical exercise. As in the case of early release programs for adult inmates, these programs for youths should consider ways to allow youthful offenders with disabilities the opportunity to earn early release and reap the other benefits of the boot camp approach.

Visitors to correctional facilities

Compliance with the ADA is not limited to an agency's treatment of inmates or corrections employees. Prison and jail administrators should be aware that visitors and others who come into the facility for a legitimate purpose must be provided access. Attorneys, clergy, counselors, probation and parole officers, and family members who may have a disability should be provided access to any program, service, or activity to which visitors without disabilities have access. For example, even if the facility does not have an inmate who is deaf or hard of hearing, an inmate may have a family member who is deaf or hard of hearing. In that case, the facility may need to make a TDD available to that inmate so he or she can communicate with family members.

Notes

1. National Council on Disability, "ADA Watch—Year One: A Report to the President and Congress on progress in Implementing the Americans With Disabilities Act," April 5, 1993, p. 38.
2. *Id.*
3. *Id.*
4. Department of Justice's Title II Technical Assistance Manual (DOJ/TAM), Section II-2.1000.
5. DOJ/TAM, Section II-3.4000.
6. DOJ/TAM, Section II-3.4100.
7. Goldman, Charles B., "Complying with the ADA," *Nation's Cities Weekly*, April 27, 1992.
8. *Id.*
9. American Correctional Association, *Standards for Adult Local Detention Facilities*, Third Edition, p. 131.

10. 28 C.F.R. Section 35.130(b)(8); DOJ/TAM, Section II-3.5100.

11. 28 C.F.R. Section 35.160(b)(2); DOJ/TAM, Section II-7.1100.

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