



# Americans with Disabilities Act (ADA):

## Frequently Asked Questions Knowledge & Information Services

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## **RESPONSES:**

### **Section I. ADA and its Application to State Courts**

**Does the ADA apply to state Courts?**

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, including courts. The ADA applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local.

**What courts are covered by the ADA?**

All state and local courts are covered by the ADA. The ADA does not cover the judicial branch of the federal government, which is covered by other laws.

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### **Section II. Eliminating Discrimination in Policies and Practices**

**Is a court required to modify its policies whenever requested to accommodate individuals with disabilities?**

A court must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. An example would be an automatic exemption from jury service for individuals with hearing or visual disabilities. The court may, however, adopt legitimate requirements are based on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a

particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

For example, where a local zoning ordinance requires a setback of 12 feet from the curb in the central business district and a courthouse requires a variance to encroach on the setback by three feet to install a ramp to the front entrance, granting the variance may be a reasonable modification of town policy for a county courthouse.

On the other hand, where an individual with an environmental illness requests a court to prohibit the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy may not be considered a “reasonable” modification of the court’s personnel policy.

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### **What are other examples of the types of modifications in policies and practices that would be reasonable in most cases?**

Examples include rewriting policies that categorically exclude people with disabilities from serving on juries, such as people who are deaf or blind; permitting a witness or spectators with diabetes to consume candy as needed to maintain blood sugar levels; or explaining the words on an instruction sheet to a citizen who is mentally retarded.

### **Are courts required to accommodate service animals?**

Yes. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public, including people with business before the court, are allowed to go. An individual with a service animal may not be segregated from other people.

### **Is the court responsible for the animal while the person with a disability is engaged in court business?**

No. The care or supervision of a service animal is solely the responsibility of his or her owner. The court is not required to provide care, food, or a special location for the animal.

### **What if the service animal barks or growls at other people or otherwise acts out of control?**

You may exclude any animal, including a service animal, from your facility when that animal’s behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards staff or members of the public may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually.

Although a court may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to conduct his or her business without having the service animal on the premises.

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## **Section III. Effective Communication**

### **What does the requirement for effective communication mean in a court setting?**

A court must ensure that its communications with individuals with disabilities are as effective as communications with others. A court must make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid or service necessary

to ensure effective communication will vary in accordance with the length and complexity of the communication involved. The ADA does not require the provision of any auxiliary aid that would result in an undue financial or administrative burden or in a fundamental alteration in the nature of the services of the court. However, a court is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and case law under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

When providing the auxiliary aid or service, the court must not pass on the costs of these aids to the person with disability, and the court must give primary consideration to the type of aid or service requested by the person with the disability.

### **What kinds of auxiliary aids and services are courts required to provide under the ADA to ensure effective communication with individuals with vision impairments?**

Appropriate auxiliary aids and services for individuals with visual impairments may include qualified readers, taped texts, and Braille or large-print materials. The auxiliary aid chosen should depend on the specific nature of the individual's disability and preferred mode of communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephone compatible with hearing aids, closed-caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved and the individual's specific disability and preferred mode of communication.

For example, court employees can often communicate with individuals who have hearing impairments through written materials or notes. In many simple transactions, such as paying fines or filing documents, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications that cannot be provided through such simple methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

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### **Does the court have to provide a sign language interpreter upon request for court spectators or court observers who wish to observe proceedings?**

Title II's anti-discrimination provision employs expansive language intended to reach all programs and actions undertaken by public entities. According to the Department of Justice, Civil Rights Division, Disability Rights Section, Congress intended Title II—including the terms "services, programs or activities"—to be read broadly to cover every action taken in every forum in which a public entity may function. Courts, in allowing spectators to attend proceedings, are providing a service, program or activity covered by title II.

Courtroom spectators with disabilities are participants in the court program and are entitled to such aids or services as will afford them an equal opportunity to follow the court proceedings. The

ultimate determination of which “spectators” are ultimately accommodated and the type of accommodation received, should be determined on a case by case basis and should not result in an undue financial or administrative burden being imposed on the court. Where a court has the responsibility for providing qualified sign-language interpreters, it also has the responsibility to pay for the services of the interpreters. In addition, the ADA regulations specifically prohibit interpreting services being assessed as an element of normal “court costs.” ([Click here](#) to see an advisory opinion letter by the Department of Justice on the subject of providing auxiliary aids to court spectators.)

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### **Are courts required to have TTYs to communicate with people who have hearing or speech impairments?**

No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by Title IV of the ADA, are available, these services generally may be used to meet this requirement.

Relay services involve a relay operator who uses both a standard telephone and a TTY to type the voice messages to the TTY user and read the TTY messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

However, state and local agencies that provide emergency telephone services must provide “direct access” to individuals who rely on a TTY or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

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### **Must court forms and other documents be made available in Braille, large print, or other formats?**

Court forms and other written communications are subject to the requirement for effective communication. Thus, where a court provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form they can use. Large-print versions of written documents may be produced on a copier with enlargement capacities. Braille versions of documents produced by computers may be produced with a Braille printer, or audiotapes may be provided for individuals who are unable to read large print or Braille. Braille documents are not required if effective communication is provided by other means. For example, staff could read a form to a blind person and fill out the person’s responses.

In determining what type of auxiliary aid or service is necessary, a public entity shall give primary consideration to the requester’s preferred mode of communication. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. The public entity shall honor the choice unless it can demonstrate that another effective means of communication is available or that the use of the means chosen would not be required under the terms of the act.

**In a court, who has the responsibility for determining when a request for a particular auxiliary aid or service constitutes an undue financial or administrative burden?**

In determining whether financial and administrative burdens are undue, all public-entity resources available for funding and operation of the service, program, or activity should be considered. The burden of proving that the request would result in an undue financial or administrative burden rests with the public entity. The decision that compliance would result in such burdens must be made by the head of the public entity or his or her designee (presumably the chief justice or administrative director of the courts) and must be accompanied by a written statement of the reasons for reaching that conclusion.

**Section IV. Program Access**

**What does the ADA require for accessibility to court facilities?**

Court must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. Court programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as program accessibility, applies to court facilities that existed on January 26, 1992. Courts do not necessarily have to make each of their existing facilities accessible if the service, program, or activity can be made accessible in another manner. For example, if a court holds hearings on the second floor of a building without elevators, it can make the program accessible by holding the hearings in an accessible room on the first floor or in another facility. The specific judicial system will be viewed in its entirety when determining accessibility. Therefore, if the court system in a particular jurisdiction consists of numerous facilities, and a specific proceeding can be moved within reason from an inaccessible facility to an accessible facility, the specific judicial system would be in compliance with the program accessibility requirements.

**Are there any limitations on the program accessibility requirement?**

Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

**How can a court determine if a new building is accessible?**

A court facility will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which is the standard that must be used for public accommodations and commercial facilities under Title III of the ADA. If the court chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

## **Is the federal government planning to eliminate the ability to choose between design standards and establish one design standard for new construction and alterations?**

Yes. The Department of Justice is proposing to amend its current ADA Standards for Accessible Design (which incorporate ADAAG) to deal with judicial, legislative, and regulatory facilities; detention and correctional facilities; residential housing; and public rights-of-way. The current ADAAG standards are minimum, generic design standards posed to ensure that there is no discrimination against disabled individuals. The proposed amendment would apply the standards for the specific sections mentioned above to new construction and alterations under Title II. The final rule will not be retroactive. In other words, courts will not be forced to redo design elements that were not required at the time that the facility was designed or renovated.

Although at this time courts are not legally required to consider the unique design elements particular to courthouses, courts should be careful of building in features that are inaccessible. If it is feasible to make a court facility more accessible, such solutions should be incorporated into the facility design.

Questions about the status of the ADAAG rules can be addressed to the Department of Justice at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

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## **What are the alteration requirements for historic court buildings?**

Alteration to historic courthouses must comply with the specific provisions governing historic properties in ADAAG or UFAS to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the courthouse, alternative standards may be used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons, including those with disabilities, should be invited to participate in the decision-making process.

The alternative requirements for historic buildings or facilities provide minimal level of access. For example:

- An accessible route is only required from one site access point (such as the parking lot).
- A ramp may be steeper than is ordinarily permitted.
- The accessible entrance does not need to be the one used by the general public.
- Only one accessible toilet is required, and it may be unisex.
- Accessible routes are required on the level of the accessible entrance and on other levels where practicable.

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## **What type of funding is available to help courts comply with the ADA?**

Funding is available through the Community Development Block Grant program (CDBG) at the U.S. Department of Housing and Urban Development, which may be used for accessible purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators. Units of local government that have specific questions concerning the use of CDBG funds for the removal of barriers should contact their local HUD Office of Community Planning and Development or call the Entitlement Communities Division at HUD, (202) 708-1577, for additional information.

### **Who is responsible for enforcing the ADA?**

The United States Department of Justice and seven other federal agencies are charged with enforcing Title II of the ADA. Individuals may file complaints with the U.S. Department of Justice within 180 days of the alleged discrimination. The Department of Justice will investigate each complete complaint, attempt informal resolution, and, if no resolution is achieved, will issue a Letter of findings to the complainant and to the public entity.

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## **Section V. General ADA Compliance in Courts**

### **What is a self-evaluation and what does it require courts to do?**

A self-evaluation is a public entity's assessment of its current policies and practices. The ADA requires that courts perform a self-assessment of their programs, services, and facilities to determine whether the courts are in compliance with the act. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. If the self-assessment identifies areas in which the court is not in compliance with the ADA, the court must formulate a plan to address the problems. All public entities, including courts, should have completed a self-evaluation by January 26, 1993. Structural changes to achieve program accessibility should have been completed by January 26, 1995. A court that has not completed its self-evaluation transition plan should take steps to do so.

### **Who has the responsibility for ADA compliance when courts are located in buildings that are owned or leased by another government agency?**

The ADA places the legal obligation on each agency respectively. When agencies share the same building, they can work to ensure that facility modifications are made as needed to provide program accessibility. Each agency is responsible for ensuring effective communication and for providing auxiliary aids and services as needed. It is often possible to share resources or equipment, such as assistive listening systems or Braille printers.

### **In a court, who has the responsibility for ensuring ADA compliance?**

Courts that employ 50 or more persons (or that are part of a system that employs 50 or more persons) must designate at least one person to coordinate their compliance efforts. These larger courts must also adopt and publish grievance procedures for resolving ADA complaints and must develop a transition plan where structural changes to facilities are needed to improve access.

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