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## **JAILS AND THE ADA**

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## **Legal Disclaimer**

# COURSE OBJECTIVES

- Understand what Title II of the ADA is and how it effects a custody environment
- Understand the definition of a disability and the importance of the ADA Coordinator in jails
- Identify major life activities, examples of limitations of major bodily functions and limitations in a jail setting
- Understand the general requirements of program accessibility
- Identify reasonable modifications in a jail setting

## WHAT IS THE ADA?

- Americans with Disabilities Act, passed in 1990
- Federal CIVIL Rights legislation that prohibits discrimination against people with disabilities in employment, state and local government, services, private businesses, telecommunications and transportation

# TITLE I

# Employment

Title I prohibits discrimination against individuals with disabilities in employment. Employers must make reasonable accommodations to employ persons with disabilities.

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## TITLE II: STATE AND LOCAL GOVERNMENTS

Title II prohibits discrimination against individuals with disabilities and requires public entities to take an active role in ensuring the accessibility of all programs, services, and activities.

# TITLE III: PUBLIC ACCOMMODATION AND COMMERCIAL FACILITIES

Title III covers places of public accommodation and commercial facilities.

Areas that are open to the public (includes inmates). New Construction

Visitors must be reasonably accommodated

## TITLE IV: TELECOMMUNICATIONS

Title IV relates to telecommunication services primarily for the deaf and hearing impaired.

## TITLE V: MISCELLANEOUS PROVISIONS

Title V “catch all” for areas not covered in Titles I-IV. Also supports individuals with disabilities who need legal recourse to uphold their civil rights.

# ADA

## AFFIRMATIVE DUTY

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- The ADA imposes an affirmative duty on jails to actively ensure equal access to facilities, programs, services and activities for citizens and inmates
- “Affirmatively” shifts the responsibility from the person with the disability to the jail.
- The goal of the ADA is full inclusion of people with disabilities into all aspects of American society.

# DOJ EMPHASIS ON THE IMPORTANCE OF CORRECTIONAL COMPLIANCE WITH THE ADA

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

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

# ROLE OF THE ADA COORDINATOR

- The ADA Coordinator is responsible for coordinating the efforts of the government entity to comply with Title II and investigating any complaints that the entity has violated Title II.

# DEFINITION OF A DISABILITY

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- An individual with a disability is one who:
  - has
  - has a record of, or
  - is regarded as having

a physical or mental impairment that substantially limits *major life activities or major bodily functions*

## WHAT IS A “MAJOR LIFE ACTIVITY”?

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- Major life activities are defined as “activities that an average person can perform with little or no difficulty”.
- They include seeing, hearing, eating, communicating, sleeping, walking, sitting and breathing
- Self care
- Performing manual tasks
- Thinking, concentrating, learning

# WHAT IS A “MAJOR BODILY FUNCTION” ?

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Examples include;

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

# 4 MAJOR CATEGORIES OF DISABILITIES

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- MENTAL ILLNESS
- PHYSICAL DISABILITIES
- DEVELOPMENTAL DISABILITIES
- LEARNING DISABILITY

# MENTAL ILLNESS

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- This is the largest group of inmates that require accommodations
- Mental illness are diseases that cause mild to severe disturbances in thought, mood or behavior, resulting in problems coping with daily life. Mental illnesses include post-traumatic stress disorder, depression, anxiety, bi-polar disorder and schizophrenia



# PHYSICAL DISABILITIES

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- Physical disabilities include deafness or hard of hearing, blindness, partially or completely missing limbs and mobility impairment.
- Also included are disabilities caused by cancer, diabetes, epilepsy, hypertension, digestive disorders and HIV/AIDS
- All individuals are entitled to live in the most integrated setting appropriate to their needs



# DEVELOPMENTAL DISABILITIES

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- Arises before adulthood and includes down syndrome, cerebral palsy, intellectual disabilities, delay in motor skill development and fetal alcohol spectrum disorder

# LEARNING DISABILITIES

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- Deficit in two or more adaptive behaviors;
  - Poor problem-solving abilities
  - Behavioral and social problems

# REASONABLE MODIFICATION

- No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.
- A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program, or activity.

28 CFR § 35.130

## REASONABLE MODIFICATION

- A public entity is required to offer reasonable modifications to ANY INDIVIDUAL WITH A DISABILITY utilizing a service, program or activity.
- Inmates AND civilians
- Visitors
- Clergy
- Attorneys
- Probation
- Volunteers

# EFFECTIVE COMMUNICATION

- Effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities
- Providing effective communication is about overcoming any possible communication barriers
- Discipline cannot be utilized against an inmate for not responding to instructions that he/she cannot hear or read

## Providing Effective Communication to Inmates who are Deaf or Hard of Hearing

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- Communicate with inmate based on inmate's preferred method of communication
- Develop communication plan depending on assessment and circumstances
- Access to VRS (Video Relay Service) if needed – Purple Software
- ASL interpreter for access to health care, court services, programs, and other

# *PIERCE v. DISTRICT OF COLUMBIA*

- Deaf inmate claims he repeatedly asked custodial staff for an interpreter to assist with his severe hearing disability
- Jail staff denied the claim
- Court ruled that whether or not Pierce asked, the facility was liable:
- “But in the court’s view, only one fact is truly material to the question of whether or not Pierce was discriminated against on the basis of his disability...and the fact is entirely undisputed: when Pierce first arrived at the prison facility, the District’s employees and contractors did nothing to evaluate Pierce’s need for accommodation, despite their knowledge that he was disabled”

**U.S DEPARTMENT  
OF JUSTICE v.  
ARLINGTON  
COUNTY  
SHERIFF'S OFFICE**

**Complaint alleges that ACSO (Complaint summarized)**

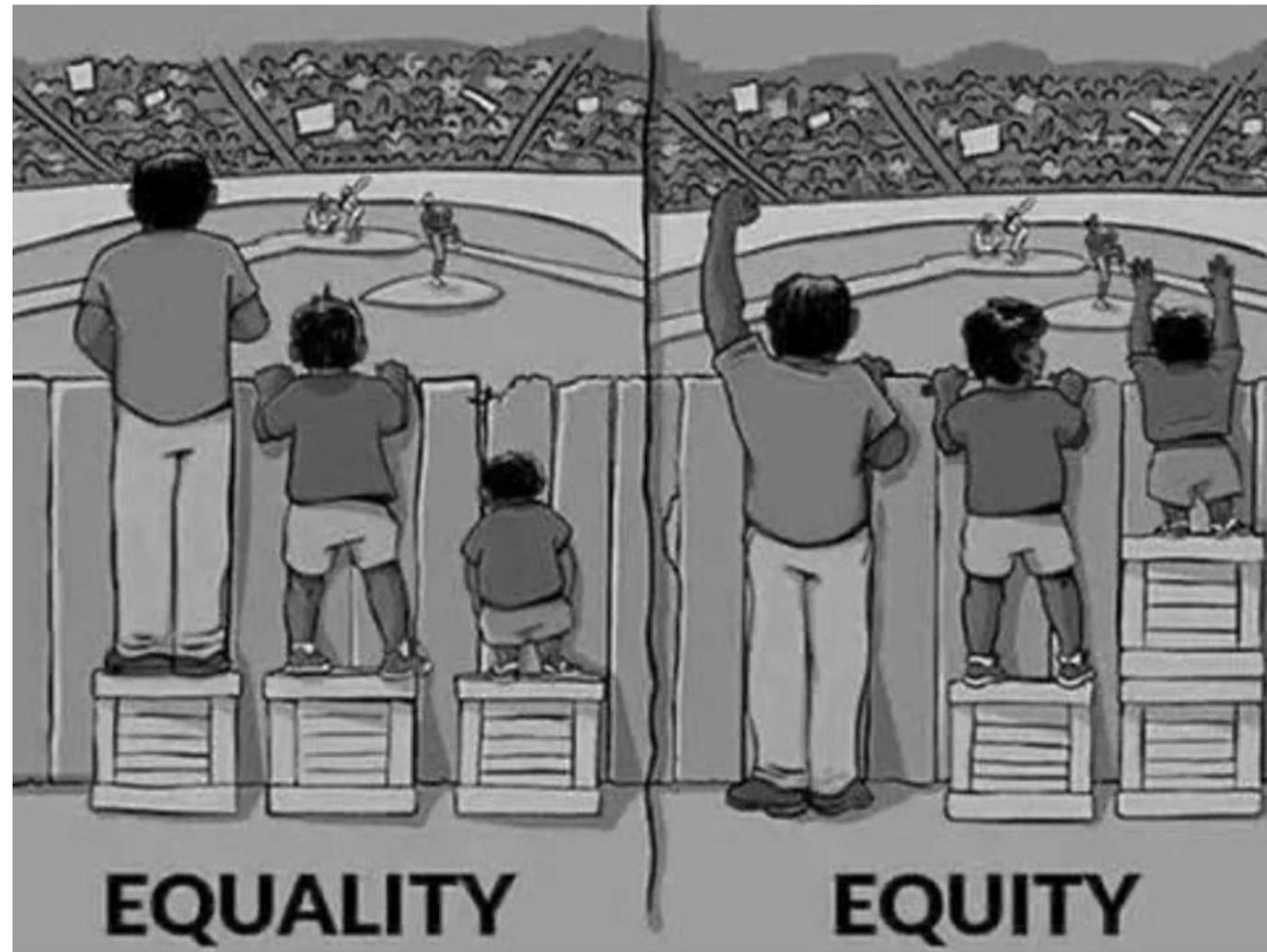
- Failed to take appropriate steps to provide auxiliary hearing aids or alternative devices that would have afforded the plaintiff (hearing impaired inmate) effective means by which to communicate with staff and other inmates
- Settlement reached in 2015
  - \$250,000 relief payed directly to plaintiff
  - Consent decree stipulating 57 points including elimination of a Correctional Captain position in exchange for a F/T ADA Compliance Officer

# REASONABLE MODIFICATIONS

Interactive example: An inmate has arthritis and needs to use a cane or wheelchair when they walk long distances, which of these is **not** a proper accommodation:

- a) a wheelchair accessible cell,
- b) a cane or wheelchair to move outside their cell,
- c) extra recreation time, or
- d) a chair to use in the yard during recreation.

# EQUALITY VS EQUITY



Equality means each individual or group of people is given the same resources or opportunities. Equity recognizes that each person **has different circumstances** and allocates resources and opportunities needed to reach an equal outcome

# ADMINISTRATIVE HOUSING INMATES WITH DISABILITIES

- Important to understand we don't house inmates in administrative housing BECAUSE of their disability.
  - Example – An inmate diagnosed as an SMI (Seriously Mentally Ill) is not housed in AH because he is mentally ill.
  - If need to house in AH because of behavior, mental health must be consulted to determine whether AH housing is appropriate for this patient.
  - Classification needs to reassess at regular intervals to see if inmate can be placed in less restricted housing. (BSCC – Title 15 requires a minimum of every 30 days)
- Inmates with a disability that are appropriately housed in Administrative Housing are required to have the same opportunity to program as inmate's w/o disabilities.

# PROGRAM ACCESS

- A jail facility must take steps to ensure that an otherwise eligible inmate with a disability can participate in all its programs.
- Facilities are required to make reasonable modifications to ensure program accessibility
- Services and programs must be delivered in the most integrated settings appropriate to the persons level of need.

# ACCESSIBLE CELLS - COMPLIANT FEATURES

- Approachable toilet
- Grab bars
- Wheelchair accessible shower
- Shower wand
- Desk/Table height
- Turning radius
- Ramp grade
- Accessible toilet
- Approachable sink
- Shower bench
- Lower mirror
- Lowered phone
- \*Note, accessible cells may need to be used by inmates with other mobility aids, not just wheelchairs

# EMERGENCY PLANNING

- Ensure that the needs of the individuals with disabilities are considered in evacuation, emergency communications, etc.

# ADA

## COMMON MISCONCEPTIONS

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- “Our facility was built before 1990, we’re grandfathered”
- Any type of wheelchair will do
- “I saw him walking, he’ll be fine”
- “He will use his prosthetic as a weapon”
- Sign language is universal
- ADA is just a thing to be dealt with by medical staff

# GRIEVANCE PROCESS

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- Public entities with 50 or more employees must have published ADA grievance procedures providing for the prompt and equitable resolution of ADA complaints.
  - 28 C.F.R. § 35.107 (b)
- Prison Litigation Reform Act
- 1983 Civil Rights Litigation

# WHAT DOES THIS ALL MEAN?

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- ADA is the law – sworn staff took an oath to uphold the law
- We must provide inmates with disabilities the same opportunities as those inmate's w/o disabilities
- A written ADA policy must be established within the facility
- Grievance process for ADA
- Staff **MUST** understand the ADA internal process and procedure

## SUMMARY

- We must ensure equal access to programs, services and activities for all inmates with disabilities
- Disabilities include physical, mental, developmental, and learning
- Thank you for your role in keeping your Jail ADA compliant