

# JAIL BULLETIN

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NUMBER 106

MARCH 1994

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

## AMERICANS WITH DISABILITIES ACT: AN OVERVIEW PART III

### ACCESSIBILITY TO PROGRAMS AND SERVICES

The ADA not only addresses how criminal justice agencies are to treat their own employees under Title II but also governs how they are to treat members of the general public who may have a disability. Although Title II went into effect on January 26, 1992, many of its requirements have been in effect for federally assisted programs for nearly 20 years under the Rehabilitation Act of 1973. The ADA merely expands coverage to all government programs, services, or activities. However, a significant consequence of the ADA was to bring to the attention of the public at large the rights of those with disabilities to enjoy both equal employment opportunity and equal access to programs and services.

Title II applies to any governmental agency regardless of its size and requires the agency to make sure that its programs, services, and activities are accessible to persons with disabilities.

This affects two areas:

- (1) the services and programs delivered by the agency, and
- (2) physical access to the facilities where these programs, services and activities are offered.

**Determining accessibility of programs and services.** To ascertain if the agency is meeting the requirements of the ADA, the offered programs, services, and activities in their entirety need to be examined and the following questions asked:

- Are any modifications to the agency's policies, practices, or procedures necessary to ensure accessibility?
- Do any eligibility criteria eliminate or tend to screen out a qualified individual with a disability from enjoying the benefits of these programs, services or activities?
- Do any policies or practices segregate persons with disabilities from others participating in these programs, services, or activities?
- Are any of these programs, services, or activities delivered at a location or facility that has the effect of denying persons with disabilities the right to enjoy the benefits of these programs, services or activities?
- If alternative services are offered to persons with disabilities, are these benefits unequal to those offered to the public at large?

If the answer to any of these questions is "yes", the agency may need to revise the way it offers its programs, services, and activities. Modification will not be necessary, however, if doing so fundamentally alters the nature of the program, service, or activity or causes an undue burden. Undue burden under Title II is analogous to undue hardship under Title I, and means "significant difficulty or expense ... taking into account such factors as the nature and cost of the action, the financial resources of the site or a parent organization, the relationship of the site to the parent organization, and the type of the parent organization".

Is it always illegal to have discriminatory practices or policies? Obviously not. An agency is allowed to take into account the safety of the public. So, for example, prohibiting persons with heart disease from riding on a roller coaster at a county fair might be a permissible rule with a discriminatory effect.

**Determining physical access to facilities.** Are criminal justice agencies expected to rebuild or renovate their facilities? The answer is a qualified "no". Criminal justice agencies are not expected to "retrofit" their existing buildings. Nor are they expected to alter historical landmarks. A rule of thumb is to look at the program or the building. Is it possible to change the way the program is delivered rather than the building? Examples include moving the program or service to an accessible part of the building, such as the first floor, providing home delivery of the service, or telephoning the person with a mobility impairment. If so, then remodeling the delivery of the service rather than the building in which it is delivered may suffice. A little creativity can go a long way in complying with this part of the ADA.

New construction or alterations to existing buildings, however, must comply with the ADA. The Architectural and Transportation Compliance Board (the "Access Board") has issued proposed accessibility guidelines for State and local governments. These guidelines are expected to have special considerations not originally contemplated for courthouses and correctional facilities. Until the final guidelines are issued, however, agencies may choose between two different sets of architectural standards: the Uniform Federal Accessibility Standard (UFAS) or the ADA Accessibility Guidelines (ADAAG).

What must be done at the administrative level to comply with Title II of the ADA? Several things. Some of these administrative requirements will only apply to entities with 50 or more employees. A word of caution on calculating the number of employees. The size of a particular entity will be computed based on the number of employees not only in the department, but also the number of employees in the city or county in which the specific department operates. Therefore, only the smallest of jurisdictions will be exempt from most administrative requirements.

What are these requirements?

- Self-evaluations of programs, services and activities delivered should be conducted and a study made of whether the policies and practices prevent persons with disabilities from enjoying the benefits and privileges of them. For entities with 50 or more employees, the self-evaluation must have been completed by January 26, 1993, and be made available to the public for 3 years.
- Transition plans for entities with 50 or more employees are required if structural changes are necessary in order to make programs accessible.
- Public notice must be given to all interested parties of their rights and protection under the ADA. This notice can include signs, posters, and pamphlets and should be made in accessible formats.

- ADA compliance officers must be designated for entities with 50 or more employees to provide a contact point for individuals who need information on the ADA and to assist the employees' education in the law.
- A grievance procedure must be created and implemented for entities with 50 or more employees to handle the receipt and processing of complaints as well as their resolution.

Information in this issue of the Jail Bulletin was obtained from the November 1993 issue of the Detention Reporter. The Detention Reporter is available from CRS, Inc. (207)725-9090. The original "National Institute of Justice Report", The Americans With Disabilities Act: An Overview, by Paul N. Rubin, may be ordered from: NIJ National Criminal Justice Reference, 1-800-732-3277.

# QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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**NUMBER 106**

**SUBJECT: Americans With Disabilities Act:  
An Overview - Part III**

**NAME:** \_\_\_\_\_

**DATE** \_\_\_\_\_

- 1 Title II requires that 1) governmental agencies make their programs, services, and activities accessible to persons with disabilities, and 2) that there is physical access to the facilities where these programs, services and activities are offered.

True                  False

2. To ascertain if the agency is meeting the requirements of the ADA, what are some of the following questions which should be asked to determine the accessibility of programs and services.

\_\_\_\_\_ Are modifications to the agency's policies, practices or procedures necessary to ensure accessibility?

\_\_\_\_\_ Do any eligibility criteria eliminate or tend to screen out a qualified individual with a disability from enjoying the benefits of these programs, services or activities?

\_\_\_\_\_ Does the person have a friend in the Department?

\_\_\_\_\_ Are any of these programs, services, or activities delivered at a location or facility that has the effect of denying persons with disabilities the right to enjoy the benefits of these programs, services or activities?

3. Criminal justice agencies are expected to rebuild or renovate their existing facilities and to alter historical landmarks in order to comply with ADA guidelines.

True                  False

4. List two administrative requirements necessary to comply with Title II of the ADA.

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**CREDIT:** One half hour credit for jail inservice training requirement

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True          False

2. To ascertain if the agency is meeting the requirements of the ADA, what are some of the following questions which should be asked to determine the accessibility of programs and services.

- X   Are modifications to the agency's policies, practices or procedures necessary to ensure accessibility?  
  X   Do any eligibility criteria eliminate or tend to screen out a qualified individual with a disability from enjoying the benefits of these programs, services or activities?  
       Does the person have a friend in the Department?  
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4. List two administrative requirements necessary to comply with Title II of the ADA.

- 1) Self evaluation of programs, services and activities to determine compliance with ADA guidelines, 2) Transition plans for entities with 50 plus employees if structural changes are required, 3) Public notice to all interested parties concerning their rights under ADA, and 4) Implementation of a grievance procedure.

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