

<b>NEBRASKA</b> Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES	POLICY <b>ADA – INCARCERATED INDIVIDUALS AND THE PUBLIC</b>		
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EFFECTIVE: November 13, 2020  
 REVISED: October 31, 2021  
 REVISED: October 31, 2022


**SUMMARY OF REVISION/REVIEW**

New Policy format throughout including changing “inmate” to “incarcerated individual”, “institution” to “facility”, and “PROCEDURE” to “PROCESS”. “NDCS ADA Coordinator” changed to “Department ADA Coordinator”.

APPROVED:



Scott R. Frakes, Director  
 Nebraska Department of Correctional Services

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## PURPOSE

To provide the Nebraska Department of Correctional Services (NDCS) with policies that support and implement the provisions of Title II of the Americans with Disabilities Act (ADA) as Amended in 2008 and the Rehabilitation Act of 1973. To define those policies and establish the process for requesting reasonable modifications, team members responsibilities, and request procedures as they apply to the incarcerated population and members of the public. (ACI-1C-07)

NDCS subscribes to a policy of non-discrimination toward individuals and incarcerated individuals with disabilities in all elements of facility incarceration to include programming, housing assignments, health services, recreation, and public access to facilities and services. This policy includes strict prohibitions against actions by individuals that create an intimidating or offensive environment through any verbal or physical conduct of a discriminatory nature.


NDCS will provide qualified incarcerated individuals with reasonable modifications that allow them equal access to the benefits, services, programs, and other opportunities offered to the incarcerated population. Reasonable modifications cannot pose a threat to the security of its facilities or place an undue burden on the department. Reasonable modifications shall not alter the nature of the goods, services, facilities, privileges, or advantages offered by NDCS. As a public entity, NDCS will provide reasonable modifications to authorized public visitors in order to access approved public areas, services, and programs available to the public. (ACI-1C-07, ACRS-6A-04)

Incarcerated individuals with disabilities are housed in a manner that provides for their safety and security. Housing used by incarcerated individuals with disabilities is designed for their use and provides for integration with other incarcerated individuals. Programs and services are accessible to incarcerated individuals with disabilities who reside in the facility. (ACRS-6A-04)

NDCS has a designated ADA coordinator accessible to incarcerated individuals and the public who is qualified and educated in the challenges faced by persons with disabilities. The department ADA coordinator in conjunction with NDCS legal counsel will lead department efforts in complying with and carrying out the legal requirements and responsibilities as defined by the Americans with Disabilities Act and the Rehabilitation Act of 1973. (ACI-5E-03)

## DEFINITIONS

- I. **ASSISTIVE DEVICE** – Devices and technologies whose primary purpose is to maintain or improve an individual’s functioning and independence to facilitate participation and to enhance overall well-being. Examples of assistive devices include wheelchairs, walkers, hearing aids, canes, and teletype (TTY) machines.
- II. **DISABILITY** – A physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.
- III. **MAJOR LIFE ACTIVITY** – Activities that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, thinking, concentrating, communicating, and working.
- IV. **QUALIFIED INCARCERATED INDIVIDUAL OR PUBLIC** – A person with a physical or mental impairment which substantially limits their ability to perform a major life activity and who can meet the essential eligibility requirements or conditions of a program, classification, service, activity, or other benefit/privilege with or without reasonable modification.

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- V. **REASONABLE MODIFICATION** – A modification to a policy, practice, or procedure necessary to avoid discrimination on the basis of disability. The modification shall not alter the fundamental nature of the service, program, or activity and shall not pose a threat to the security of the facilities or place an undue burden on the department.
- VI. **UNDUE BURDEN** – A modification that would be unduly costly, extensive, substantial, disruptive, or would otherwise fundamentally alter the nature of the program or service to be performed or compromise the safety or security of facilities, team members, incarcerated individuals, or visitors.

PROCESS

I. NDCS TEAM MEMBER ROLES AND RESPONSIBILITIES

A. Department ADA Coordinator


NDCS provides incarcerated individuals with access to an ADA Coordinator who is appropriately trained and qualified in the challenges and problems faced by incarcerated individuals with disabilities, programs designed to assist disabled incarcerated individuals, and the legal requirements for protection of incarcerated individuals with disabilities. Specific duties of the department ADA coordinator include: (ACRS-6A-01-1, ACI-5E-03)

1. Process all requests for reasonable modifications from incarcerated individuals within NDCS custody.
2. Coordinate the procurement of assistive devices or other modifications with purchasing team members and health services team members.
3. Review medical documentation associated with requests for reasonable modifications.
4. Maintain NDCS records on all ADA related matters.
5. Advise NDCS leadership and facility administration on issues related to disability policy and the issues faced by disabled incarcerated individuals.
6. Train and educate NDCS team members on issues affecting the disabled incarcerated individual population, compliance with applicable disability discrimination laws, and strategies and methods to better manage and interact with incarcerated individuals with disabilities.

B. Facility ADA Coordinator

Each facility warden will appoint a facility ADA coordinator to assist the department ADA coordinator and the disabled population of their facility. The specific duties of the facility ADA coordinators may be auxiliary to their primary duties and include:

1. Assist the department ADA coordinator in facilitating an interactive process with incarcerated individuals requesting reasonable modifications.

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2. Advise the department ADA coordinator and facility warden on emerging ADA related issues and other issues affecting the disabled incarcerated individual population within their facility.
3. Assist the department ADA coordinator in implementing reasonable modifications.
4. Monitor the efficacy of approved modifications.
5. Promote the cause of ADA compliance and the ethical treatment of incarcerated individuals with disabilities.

C. Other NDCS Team Members

All NDCS team members play a role in ensuring ADA compliance and promoting the rehabilitation of incarcerated individuals with disabilities. General NDCS team member responsibilities include:


1. Informing the facility ADA coordinator or the department ADA coordinator on issues or deficiencies related to ADA compliance.
2. Maintain an atmosphere that promotes the ethical treatment and respect of incarcerated individuals or other persons with disabilities.
3. Refer incarcerated individuals with disabilities to the department ADA coordinator for assistance when appropriate.
4. Provide assistance to incarcerated individuals with disabilities when appropriate.
5. Remain aware of the specific and unique needs of incarcerated individuals with disabilities and tailor interactions and communication with them to accommodate their communicative needs when appropriate.

II. REQUESTING REASONABLE MODIFICATIONS

A. Incarcerated individual Requests and Appeal Process

Incarcerated individuals may request reasonable modifications by contacting the department ADA coordinator or their facility ADA coordinator in writing utilizing the Incarcerated individual Interview Request or Grievance system, or in any other reasonable format that is accessible to the incarcerated individual and adequately conveys the nature of their request. Any NDCS team member who receives an incarcerated individual grievance that references an incarcerated individual's rights under the ADA shall send a copy of the grievance to the department ADA coordinator. The written response to the incarcerated individual grievance shall indicate that the grievance has been forwarded to the department ADA coordinator for investigation. Upon receipt of the request for modification, the following will occur:

1. Within 10 business days, the department ADA coordinator will issue a response to the request and formally begin the interactive process to accommodate the incarcerated individual or resolve the complaint. If the request is received by the facility ADA Coordinator, the request will be forwarded to the department ADA

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coordinator who will issue a response within 10 business days of receiving the request from the facility ADA coordinator.

2. The department ADA coordinator will work with health services team members to review the nature of the incarcerated individual's disability as needed and to assess any medically recommended modifications.
3. The department ADA coordinator will provide updates on the status of the request and seek the incarcerated individual's input on potential modifications, options, or resolutions. The department ADA coordinator will conduct an interview with the incarcerated individual if needed to assess the request and the feasibility of modifications or potential resolutions.
4. The department ADA coordinator will consult with relevant stakeholders to determine the feasibility of all modification and resolution options. Prior to issuing a decision to the incarcerated individual, the department ADA coordinator will receive final approval from the corresponding facility's deputy director.
5. The department ADA coordinator will notify the incarcerated individual in writing (or another accessible form) of the decision regarding their request for a reasonable modification.
6. If an incarcerated individual disagrees with the decision issued by the department ADA coordinator, they may appeal the decision to agency legal counsel. The incarcerated individual may outline or submit additional evidence as to why they disagree with the decision.
7. Within 20 business days of receiving the appeal, agency legal counsel or their designee will respond to the incarcerated individual in writing (or in another accessible form) and inform them of their final decision.

**B. Public Modification Requests**

NDCS provides reasonable modifications to ensure that all parts of the facility that are accessible to the public are accessible and usable by visitors and members of the public with disabilities. Requests for modifications may be submitted, in writing, or through another accessible format that adequately conveys the nature of the request to the department ADA coordinator. Upon receipt of the request, the following will occur: (ACI-2C-11, ACRS-E-02)

1. Within 10 business days, the department ADA coordinator will contact the requesting individual and formally begin an interactive process to assess their specific needs and the feasibility of the requested modification.
2. If the disability is not obvious, the department ADA coordinator may request medical or other documentation that denotes the nature of the individual's disability.
3. The department ADA coordinator will provide updates on the status of the request and seek input from the individual regarding potential modifications. As needed,

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the department ADA coordinator will conduct an interview with the individual to assess the request and the feasibility of modifications or resolutions.

4. The department ADA coordinator will consult with relevant stakeholders to determine the feasibility of any possible modifications. Prior to issuing a decision, the department ADA coordinator will receive final approval from the corresponding facility's deputy director.
5. The department ADA coordinator will notify the individual in writing (or another accessible form) of the decision regarding their request.

C. Complaints Regarding NDCS ADA Compliance

Complaints regarding NDCS ADA compliance may be filed with the Nebraska ADA Task Force. The task force can be reached at:


Nebraska ADA Coordinator/Employee Relations Representative  
 1526 K Street, Suite 120, Lincoln, NE 68508  
 (402) 471-2075  
[nebraska.ada.coordinator@nebraska.gov](mailto:nebraska.ada.coordinator@nebraska.gov)

III. SCREENING AND IDENTIFICATION OF INCARCERATED INDIVIDUALS WITH DISABILITIES

A. Intake Screening and Identification of Disabilities

Upon entering NDCS custody, the following will occur to inform incarcerated individuals of their rights under the ADA and to identify incarcerated individuals with disabilities:

1. Incarcerated individuals will be provided with information that outlines their rights under the ADA, the process for requesting reasonable modifications, and the name and contact information of the department ADA coordinator.
2. Incarcerated individuals will be screened for disabilities during their initial intake period upon entering NDCS custody in accordance with Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*. During this period, health services team members will determine the medical necessity of assistive devices or other modifications that may be provided to incarcerated individuals to assist in their independent functioning and living ability.
3. If an incarcerated individual believes that health services has failed to provide an assistive device or modification that is of medical necessity, they may contact the department ADA coordinator through an Incarcerated individual Interview Request form who will independently review the decision of health services team members and the incarcerated individual's medical/disability history.
4. Incarcerated individuals will be provided with appropriate modifications that allow them to fully participate in the intake and health screening process. In the event that an incarcerated individual requires a reasonable modification, interpreter, or other assistive device to participate in the intake and health services/disability screening process that is not readily available, health services or other appropriate NDCS team members will contact the department ADA Coordinator who will

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arrange for the appropriate modifications as soon as possible based on the level of need of the incarcerated individual.

5. NDCS health services or other appropriate intake team members will notify the department ADA Coordinator of incarcerated individuals with significant disabilities or impairments so that modifications can be planned and evaluated for when the incarcerated individual leaves the intake facility and transitions to another NDCS facility.


**B. Post Intake Screening and Identification of Disabilities**

1. NDCS will monitor and routinely screen incarcerated individuals for the development of new disabilities or other impairments during their time in NDCS custody in accordance with Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*.
2. Incarcerated individuals requesting health services or medical attention to monitor or identify new or pre-existing disabilities outside of the prescribed schedule in Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews* shall request such services through the Incarcerated individual Interview Request form addressed to their facility health services team members.
3. Incarcerated individuals may direct requests for medical attention related to a disability to their facility health services team members. If an incarcerated individual believes that they are being denied access to medical care that is needed to treat or manage a disability, they should contact the department ADA coordinator through an Incarcerated individual Interview Request form or personal correspondence.
4. Incarcerated individuals will be provided reasonable modifications, interpretative services, or other assistive devices that allow them to fully participate in all medical screening and health services processes.

**IV. HOUSING INCARCERATED INDIVIDUALS WITH DISABILITIES**

NDCS will provide equal and accessible housing to all incarcerated individuals regardless of disability status.

- A. Incarcerated individuals with disabilities are housed in a manner that provides for their safety and security. Housing used by incarcerated individuals with disabilities is designed for their use and provides for integration with other incarcerated individuals. Incarcerated individuals will be housed in the least restrictive setting that is appropriate to ensure safety and security in accordance with their classification. (ACI-2C-11)
- B. Incarcerated individuals with disabilities will be integrated into the general population to the maximum extent possible. Incarcerated individuals with disabilities will not be housed in more restrictive settings or within medical facilities without cause or due to a lack of accessible cells.

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- C. NDCS will make available education, equipment, facilities, or other support to ensure that incarcerated individuals with disabilities are able to perform self-care and personal hygiene in a reasonably private environment. (ACI-2C-13, ACRS-6A-04-2)
- D. Questions or concerns regarding the design compliance or overall accessibility of physical space, facilities, or cells may be directed to the department ADA coordinator who will consult with facility maintenance who will consult with Engineering.
- E. Incarcerated individuals may make requests for reasonable modifications to facilities or physical spaces by contacting the department ADA coordinator and providing an overview of their specific request and needs.

V. ACCESS TO PROGRAMS, SERVICES, AND ASSISTIVE DEVICES

A. Access To Programs and Services


NDCS subscribes to a policy of non-discrimination within offered services and access to programming. No qualified incarcerated individual shall be denied the right participate in a service or program solely on the basis of a disability. (ACI-3D-04)

1. Programs and services are accessible to incarcerated individuals with disabilities who reside in NDCS facilities. (ACI-2C-11)
2. Incarcerated individuals shall direct requests for reasonable modifications to access programs or services to the department ADA coordinator. Requests for modifications related to the participation in programs and services should be made as soon as reasonably possible to allow the department ADA coordinator and the service/program team members time to procure or implement the requested modification prior to the beginning of the program/service.
3. After a request for reasonable modification has been approved, the program/service manager or their designee will work with the department ADA coordinator to develop an Individual Modification Plan that outlines how the program or service will be modified to ensure the disabled incarcerated individual has full access and the ability to fully participate in the program/service.
4. Requests for interpreters to accommodate disabled incarcerated individuals who communicate through a means other than spoken English shall be made and granted in accordance with Policy 200.03, *Interpretation and Translation Services*.

B. Access to Assistive Devices and Technology

NDCS will provide assistive devices and technology to incarcerated individuals that allow them to participate in programs and services that they are qualified for and to promote independent living. The technology provided to an incarcerated individual with hearing or speech disabilities shall be determined based on an individual assessment of the needs of the incarcerated individual. Telephones with volume control are also made available to incarcerated individuals with hearing impairments. Incarcerated individuals shall not be denied access to assistive technology, except when the facility warden, their designee, or a higher authority can present clear and convincing evidence that access will jeopardize the safety and security of the facility or of others. (ACI-7D-13, ACRS-5A-19)



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VI. NEBRASKA PAROLE BOARD HEARINGS

When hearings conducted by the Nebraska Parole Board occur within NDCS facilities, NDCS will have the primary responsibility of ensuring that incarcerated individuals have reasonable modifications allowing them to participate in the hearings. Incarcerated individuals should request reasonable modifications for parole hearings as soon as reasonably possible to allow NDCS the proper time evaluate and implement the modification if appropriate. Incarcerated individuals will follow the normal NDCS reasonable modification request process to receive reasonable modifications for parole hearings.

REFERENCE

I. STATUTORY REFERENCE AND OTHER AUTHORITY

- A. Americans with Disabilities Act of 1990 (Pub. L. 101-336) and the ADA Amendments Act of 2008 (Pub. L. 110-325)
- B. 29 CFR § 1614.203 - Rehabilitation Act of 1973

II. NDCS POLICIES

- A. Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*
- B. Policy 200.03, *Interpretation and Translation Services*

III. ATTACHMENTS – None noted

IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA)

- A. Expected Practices for Adult Correctional Institutions (ACI) (5<sup>th</sup> Edition): 5-ACI-1C-07, 5-ACI-5E-03, 5-ACI-2C-11, 5-ACI-2C-13, 5-ACI-3D-04, 5-ACI-7D-13
- B. Standards for Adult Community Residential Services (ACRS) (4<sup>th</sup> edition): 4-ACRS-5A-19, 4-ACRS-6A-01-1, 4-ACRS-6A-04, 4-ACRS-6A-04-2, 4-ACRS-7E-02