



U.S. Department of Justice
Civil Rights Division

EXAMPLES AND RESOURCES TO SUPPORT CRIMINAL JUSTICE ENTITIES IN COMPLIANCE WITH TITLE II OF THE AMERICANS WITH DISABILITIES ACT

The legal requirements this guidance discusses are restatements of existing requirements from Title II of the Americans with Disabilities Act, 42 USC 12131-12134, and its implementing regulations at 28 CFR pt. 35. If you have questions about these requirements, please contact the Civil Rights Division's [ADA Information Line](#).

Title II of the Americans with Disabilities Act (ADA) protects individuals with mental health disabilities and intellectual and developmental disabilities (I/DD) from discrimination within the criminal justice system. Pursuant to the ADA, state and local government criminal justice entities—including police, courts, prosecutors, public defense attorneys, jails, juvenile justice, and corrections agencies—must ensure that people with mental health disabilities or I/DD are treated equally in the criminal justice system and afford them equal opportunity to benefit from safe, inclusive communities. Nondiscrimination requirements, such as providing reasonable modifications to policies, practices, and procedures and taking appropriate steps to communicate effectively with people with disabilities, also support the goals of ensuring public safety, promoting public welfare, and avoiding unnecessary criminal justice involvement for people with disabilities.

The ADA also requires State and local governments to avoid discriminating against people with mental health disabilities or I/DD in administering services, and to serve people with these disabilities in the most integrated setting appropriate to their needs. Effective implementation of these requirements will help people with these disabilities receive the community-based services they need. Furthermore, increased collaboration and improved resource allocation between criminal justice agencies and disability service systems can also help reduce the social, vocational, economic, and educational disparities people with disabilities experience. This document highlights opportunities to increase ADA compliance and positive community outcomes through improved policies, effective training, use of data, resource allocation, and collaboration between criminal justice entities and disability service systems. The Department of Justice hopes this technical assistance will promote the safety and welfare of both individuals with disabilities and criminal justice personnel.

I. General ADA Requirements

Title II of the ADA provides that no qualified individual with a disability shall, because of that disability, be excluded from participation in, denied the benefits of, or subjected to discrimination in the services, programs, and activities of all state or local government entities,

including law enforcement, corrections, and justice system entities. Such services, programs, and activities include:

- Interviewing and questioning witnesses, victims, or parties, negotiating pleas, assessing individuals for diversion programs, conducting arraignment, setting bail or conditions of release, taking testimony, sentencing, providing notices of rights, determining whether to revoke probation or parole, or making service referrals, whether by prosecutors and public defense attorneys, courts, juvenile justice systems, pre-trial services, or probation and parole services;
- Jail and prison intake and classification evaluations, medical and mental health services, recreational activities, educational and vocational programs, rehabilitative programs, grievance procedures, incentive programs, disciplinary and classification proceedings, housing placements, parole and release programs, and re-entry planning; and
- Law enforcement street interactions, taking and responding to complaints or calls for assistance, vehicle stops and searches, arrests, detentions, interviews, interrogations, and emergency responses.

Title II's general prohibitions against discrimination are subject to limitations. When an individual poses a "direct threat" to the health or safety of others, i.e., a significant health or safety risk that cannot be mitigated or eliminated by a reasonable modification of policies, practices or procedures, Title II does not require a public entity to permit that individual to participate in, or benefit from, services, programs, or activities.

The Department highlights below some key Title II obligations for state and local government entities. Every agency and justice system is unique, and state and local leaders are the ones who determine the most effective implementation strategies for their agencies. Therefore, to support state and local law enforcement, corrections, and justice systems leaders in complying with these ADA requirements, each ADA obligation is followed by compliance examples. These examples reflect many of the experiences of state and local leaders around the country who have implemented these strategies to comply with the ADA.

Under Title II, state and local government entities must, among other obligations:

- Ensure that people with mental health disabilities or I/DD have an equal opportunity to participate in and benefit from the entities' programs, services, and activities.
 - Examples of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Trained law enforcement officers not to arrest or use force on people with mental health disabilities or I/DD for offenses for which they typically do not arrest or use force on people without disabilities.

- Developed non-discriminatory eligibility criteria for diversion programs such as community services, specialty courts, or probation programs.
 - Developed non-discriminatory eligibility criteria for early release, parole, or other re-entry programs.
- Make reasonable modifications in policies, practices, or procedures when necessary to avoid disability discrimination in all interactions with people with mental health disabilities or I/DD, unless the modifications would fundamentally alter the nature of the service, program, or activity. The reasonable modification obligation applies when an agency employee knows or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification, such as during a crisis, when a disability may interfere with a person's ability to articulate a request. Exigencies and safety considerations play a significant role in determining whether a modification is reasonable. Officers need not make modifications that would interfere with their ability to respond to a safety threat, as such modifications would not be reasonable.
 - Examples of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Trained law enforcement officers that, when responding to a person in mental health crisis who does not pose a significant safety threat, they should consider providing time and space to calm the situation. Trained officers that, if available and appropriate, they should dispatch a crisis intervention team or officers trained in de-escalation techniques to the scene, or involve mental health professionals.
 - Required court staff to explore reasonable modifications to allow qualified individuals with these disabilities to participate in diversion and probation programs and specialty courts.
 - Implemented policies that, in situations where a prisoner with these disabilities exhibits negative or disruptive behavior that does not pose a significant safety threat, encourage staff to seek assistance from prison-based crisis intervention teams and mental health professionals, involve officers trained in the use of de-escalation techniques, or forego discipline and provide treatment where it is apparent that a prisoner's behavior was related to a disability.
- Take appropriate steps to ensure that communication with people with disabilities is as effective as communication with people without disabilities, and provide auxiliary aids and services when necessary to afford an equal opportunity to participate in the entities' programs or activities. Even when staff take affirmative steps to ensure effective communication, not everyone will understand everything in the same way and there will necessarily be a spectrum of comprehension across the population based on many factors, including but not limited to age, education, intelligence, and the nature and severity of a

disability. Public entities are not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or undue financial and administrative burdens.

- Example of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Trained staff and officers to use effective communication methods, such as using simple language to convey an oath or question, checking understanding by asking people to explain the communication in their own words, giving people time to read documents, or providing or allowing assistive technology, such as a tablet or picture board.
- Administer services, programs, and activities, including disability services, in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Integrated settings allow people with disabilities to interact with people without disabilities to the fullest extent possible.
 - Examples of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Established prison classification and placement procedures that generally place prisoners with disabilities in facilities offering the same programs and opportunities as prisoners without disabilities. Provided prisoners with mental health disabilities or I/DD with the services necessary to permit them to reside and participate in the same programs as prisoners without disabilities.
 - Adopted policies to avoid unnecessarily placing prisoners with mental health disabilities or I/DD in restrictive housing, limited the time these prisoners remain in restrictive housing, provided treatment and enhanced opportunities for out-of-cell therapeutic activities, and continuously monitored the mental health of prisoners in restrictive housing. Also made reasonable modifications to conduct rules and disciplinary, classification, and restrictive housing hearings to help limit the number of prisoners with these disabilities unnecessarily placed in restrictive housing.

Public entities may not:

- Use methods of program administration, including written rules and agency practices that have a discriminatory effect on people with disabilities.
 - Example of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Trained and supervised corrections staff to conduct screening interviews of all prisoners upon admission to help identify prisoners with mental health disabilities or I/DD.

- Impose eligibility criteria that screen out people with disabilities from their programs, unless the criteria are necessary for the program.
 - Examples of how local law enforcement, corrections, and justice system leaders have facilitated compliance with this obligation:
 - Forbade use of non-essential eligibility criteria in diversion or re-entry programs that courts or corrections operate, mandate, or contract with.

II. Systemic Considerations

It is important that criminal justice entities anticipate and prepare for the disability-related needs of people with mental health disabilities or I/DD. Training criminal justice personnel, conducting reviews of policies and procedures, and collaborating with mental health and disability services providers are three ways to achieve that end.

A. Training

Criminal justice personnel are likely to encounter people with mental health disabilities or I/DD who are part of the communities they serve and protect. Several factors may indicate that a person has a mental health disability or I/DD, including self-report, information provided to dispatch or to the officer or employee, the employee's prior knowledge of the person, or the employee's direct observation. Without proper training, criminal justice personnel may misinterpret the conduct of individuals with mental health disabilities or I/DD as intentional disrespect or disobedience, which may escalate encounters and lead to unnecessary criminal justice involvement. Appropriate training can prepare personnel to execute their ADA responsibilities in a manner that keeps staff, individuals with disabilities, and members of the community safe; promotes public welfare; builds trust with the community; respects the rights of individuals with disabilities; ensures effective use of criminal justice resources; and contributes to reliable investigative and judicial results.

Criminal justice entities have provided trainings to their personnel on these topics:

- How non-medically trained criminal justice personnel can recognize common characteristics and behaviors associated with mental health disabilities or I/DD;
- How to interact with individuals with these disabilities;
- When and how to make reasonable modifications for individuals with these disabilities;
- What individuals with these disabilities may experience and how that may affect their interactions with others (*e.g.*, hearing voices);
- How to take appropriate steps to ensure effective communication with individuals with mental health disabilities or I/DD;
- How to avoid escalating interactions with people with these disabilities;
- How to use de-escalation or other alternative techniques to increase safety and avoid using force unnecessarily;
- What local resources are available to provide treatment, services, or support for individuals with mental health disabilities or I/DD; and

- When and how to draw upon these resources or others, such as crisis intervention teams, mobile crisis teams, assertive community treatment teams, or mental health providers.

Special Considerations for Law Enforcement Agencies: Law enforcement agencies have provided training to dispatchers on how to recognize and handle calls from or about people with mental health disabilities or I/DD, including on the following topics:

- The availability of crisis intervention teams or other resources to respond to calls about individuals with mental health disabilities or I/DD;
- When to dispatch crisis intervention teams or officers with training in interacting with people with these disabilities;
- When to consider dispatching a mental health provider rather than a police officer;
- Information about, and contact information for, community-based service providers; and
- The importance of communicating information dispatchers receive about individuals' disabilities to responding officers or service providers.

B. Analysis

Criminal justice entities have reviewed their policies, practices, procedures, and standing orders to ensure that they do not discriminate against people with mental health disabilities or I/DD. For example, entities have collected, aggregated, and analyzed data regarding individuals served by the entity and outcomes to determine whether people with disabilities are subjected to bias or other discrimination. Where potential discrimination has been found, entities have taken necessary corrective measures, such as revising policies and procedures; refining quality assurance processes; and implementing training.

C. Collaboration with Other Entities

States, counties, and cities, which often administer both criminal justice and disability service systems, have obligations under the ADA to ensure people with mental health disabilities or I/DD receive services in the most integrated setting appropriate to their needs. Services such as [scattered-site supported housing](#), [Assertive Community Treatment \(ACT\)](#), [crisis services](#), [intensive case management](#), [respite](#), [personal care services](#), [behavior support](#), [nursing care](#), [peer support](#), and [supported employment services](#) can support a jurisdiction's efforts to divert people with these disabilities from the criminal justice system and serve them in their communities.

State and local governments must prevent unnecessary institutionalization of people with disabilities. Governments have complied with this obligation by using community-based treatment services to keep people with disabilities out of the criminal justice system. These governments have recognized that the responsibility for effectively serving people with mental health disabilities or I/DD cannot fall to law enforcement alone. Therefore, they ensure that their disability service systems offer sufficient community-based services and support criminal justice entities to coordinate with, and divert to, community-based services.

Criminal justice entities have collaborated with their jurisdiction's mental health and disability services programs and with service providers on the following:

- Ensuring that law enforcement officers have contact information for relevant service providers and developing policies for when dispatchers or law enforcement officers should contact mental health service providers rather than engage in arrests.
- Helping individuals with these disabilities access community-based services. Federal resources may be available to help individuals connect with and participate in these services. When release conditions include finding housing and employment, agencies have prepared their staff to facilitate access to community-based supported housing and employment services or have modified such conditions when needed to avoid discrimination.
- Facilitating Medicaid or health insurance enrollment for prisoners with disabilities, identifying community-based service providers, and collaborating with providers to complete intake interviews and schedule initial appointments before release.¹
- Developing policies, procedures, and training on diversion, de-escalation, release planning, use of force, and discipline.

III. Resources

A. Examples of Policies and Practices That Facilitate ADA Compliance

Department of Justice settlement agreements provide examples of policies and procedures that assist in achieving ADA compliance in key areas.

Crisis Response: Through settlement agreements with the Department, police departments in [Portland](#) and [Seattle](#) trained additional officers to serve on Crisis Intervention Teams (CIT). Also, all officers in these jurisdictions now receive basic training on effectively interacting with people with mental health disabilities and on crisis de-escalation. The [New Orleans Police Department](#) and the [Portland Police Bureau](#) developed CIT [policies](#) that encourage de-escalation, diversion, and coordination with the local mental health agency. Portland also developed a comprehensive [Behavioral Health Unit](#) that includes multiple co-responder teams that pair a specially trained police officer with a mental health professional to divert frequent users of police services based on their mental health needs.

Use of Force: Agencies have revised use-of-force policies and training after the Department found a pattern of unreasonable use of force, including on people with mental health disabilities. For example, Seattle revised its [use-of-force training curriculum](#) and policy to emphasize

¹ Federal resources may be available to help agencies offset the costs of Medicaid-related activities. Moreover, incarceration does not preclude a prisoner from being determined Medicaid eligible, even while Medicaid is suspended during incarceration.

conducting threat assessments, determining whether behaviors are disability-related, using CIT whenever feasible, and using de-escalation techniques such as time, distance, and shielding.

Diversion and Coordination with Mental Health Providers: A [settlement agreement](#) in Portland led to the creation of a crisis center available to first responders seeking to divert individuals with disabilities from the criminal justice system into the community mental health system. Portland and New Orleans have implemented policies to transport these individuals to treatment by [ambulance](#) or [civilian services](#) in lieu of police vehicles. Similarly, police departments across Delaware can now refer people in mental health crisis to community-based [Crisis Intervention Services](#). Delaware created these alternatives to meet their responsibility under the ADA under a [settlement agreement](#) with the Department.

In a [settlement agreement](#) with Hinds County, Mississippi regarding its jail, the Department and County agreed to “work toward the goal of population reduction in a manner that preserves public safety, prioritizes diversion for unnecessary criminal justice involvement, and reduces recidivism,” particularly for individuals with mental health disabilities. Hinds County agreed to establish a criminal justice coordinating committee to enhance coordination between criminal justice and mental health agencies to prevent unnecessary arrest and detention and connect individuals with disabilities to mental health services. Agreements in both [Delaware](#) and [New Hampshire](#) target community-based mental health services at individuals with mental illness who have histories of involvement in the criminal justice system to prevent recidivism.

A settlement in [Tennessee](#) led to statewide [training](#) of law enforcement officers on interacting with people with I/DD.

Release Planning: The [settlement agreement](#) with Hinds County, Mississippi requires the jail to notify community mental health providers when releasing a prisoner with serious mental illness so the prisoner can transition safely to the community. To aid in transition, the jail will provide prisoners with details related to a follow up appointment at the relevant mental health center and give them sufficient medications to cover the period until the scheduled appointment.

Restrictive Housing (Solitary Confinement): In a [settlement](#), Ohio agreed to reduce its reliance on seclusion for juveniles on the mental health caseload at its secure juvenile facilities by limiting the bases for placing juveniles in seclusion and reducing the time period any juvenile spends in seclusion. Ohio eventually [eliminated the use of disciplinary seclusion](#) at its juvenile facilities. Similarly, in response to Department of Justice [findings](#), Pennsylvania [revised its policies](#) to divert prisoners with serious mental health or developmental disabilities from solitary confinement and into treatment units.

Disciplinary Proceedings: The Pennsylvania Department of Corrections [modified its policies and procedures](#) to require that prisoners with serious mental health or developmental disabilities be evaluated by mental health staff to consider mitigated sanctions if they are subject to serious misconduct sanctions and to resolve allegations of non-violent offenses informally. In addition, the policies no longer permit discipline for self-injurious behavior.

B. Case Findings and Remedies

Law Enforcement

- [Baltimore, MD Police Department](#)
- [Portland, OR Police Bureau](#)
- [Cleveland, OH Division of Police](#)
- [Ferguson, MO Police Department](#)
- [Albuquerque, NM Police Department](#)
- [Seattle, WA Police Department](#)
- [New Orleans, LA Police Department](#)

Corrections and Juvenile Detention Facilities

- [Ohio Department of Youth Services](#)
- [Hinds County, MS Jail](#)
- [Pennsylvania State Correctional Institution at Cresson](#)
- [Leflore County, MS Juvenile Detention Center](#)

Community-Based Services

- [Delaware](#)
- [Georgia](#)
- [New Hampshire](#)
- [North Carolina](#)
- [Virginia](#)

C. Additional Resources

- General requirements of Title II of the ADA - [ADA Title II Technical Assistance Manual](#).
- How Title II applies to law enforcement agencies - [Commonly Asked Questions about the ADA and Law Enforcement](#).
- Title II's effective communications requirement - [ADA Title II Technical Assistance Manual](#) and [ADA Update: A Primer for State and Local Governments](#).
- Integration obligations of state and local disability service systems - [Statement on Enforcement of the Integration Mandate of Title II of the ADA and Olmstead v. L.C.](#)
- Resources to help officers respond appropriately to people with mental illness - Bureau of Justice Assistance's [Police-Mental Health Collaboration Toolkit](#).
- Alternatives to incarceration - DOJ Office of [Community Oriented Policing Services](#).
- Diversion - The Substance Abuse and Mental Health Services Administration's (SAMHSA) GAINS Center for Behavioral Health and Justice Transformation.

- Specialty courts - [Bureau of Justice Assistance](#) and SAMHSA's [Behavioral Health Treatment Court Collaboratives](#).
- Alternatives to seclusion and restraint - SAMHSA's [National Center for Trauma-Informed Care and Alternatives to Seclusion and Restraint](#) and DOJ's [Report and Recommendations Concerning the Use of Restrictive Housing](#).

January 2017