



**STATE OF MONTANA/
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 3.3.15	Subject: AMERICANS WITH DISABILITIES ACT (ADA) OFFENDER ACCOMMODATIONS
Chapter 3: FACILITY/PROGRAM OPERATIONS	Page 1 of 5 and Attachments
Section 3: Rights and Privileges	Effective Date: 03/11/2015
Signature: /s/ Loraine Wodnik, Deputy Director	Revised: 12/12/2016

I. POLICY

The Department of Corrections will make reasonable accommodations to the known physical or mental limitations of an offender with a disability unless to do so would result in an undue financial or administrative burden, constitute a direct threat, endanger the health or safety of any person, or fundamentally alter the inherent nature of the Department's business.

II. APPLICABILITY

All divisions, facilities, and programs, Department-owned and contracted, as specified in contract.

III. DEFINITIONS

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Continuous Accommodations – Accommodations that are constant, on a permanent or semi-permanent basis. Some examples of accommodations are listed in the attached Accommodations Categories.

Disability – A physical or mental impairment that substantially limits one or more of a person's major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment. See *Americans with Disabilities Act of 1990 42 USC 12010*, as amended.

Major Life Activities – Functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Offender Americans with Disabilities Act (ADA) Coordinator – The individual assigned from the Clinical Services Division to facilitate ADA compliance for offenders.

OMIS – Acronym for the Department's Offender Management Information System.

Situational Accommodations – Accommodations that are temporarily needed based on circumstances. Some examples of accommodations are listed in the attached Accommodations Categories.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. The Department and contracted facilities or programs will provide offenders access to required or approved activities, services, and programs.

B. Responsibility

1. The offender Americans with Disabilities Act (ADA) coordinator will assist facility and program administrators' compliance with the ADA and Montana Human Rights Act (MHRA). The offender ADA Coordinator will respond to requests for reasonable accommodations and complaints, train staff on the ADA, and grant accommodations to help ensure that offenders with disabilities have access to all Department programs and services and activities that is consistent with the ADA.
2. The offender ADA coordinator will have training in:
 - a. the Americans with Disabilities Act, Title II, which requires equal access to state programs and facilities by individuals with disabilities; and
 - b. the challenges faced by offenders with physical and/or mental impairments, programs designed to educate and assist disabled offenders, and all legal requirements for the protection of offenders with disabilities.
3. The offender ADA coordinator, in coordination with the facility or program administrator, may designate a staff member at each facility or program to assist with the implementation of this policy.
4. All Department employees must recognize and take seriously all requests for disability accommodation, and any complaints or grievances involving disability discrimination or accessibility.
5. Through the screening, assessment, and intake process, if an offender appears to need an accommodation, Department employees will notify the ADA coordinator.

C. Requests for Reasonable Accommodations

1. A request for accommodation is the first step in an interactive process between the offender ADA coordinator, or designee, and the offender to clarify the offender's request and to identify any appropriate reasonable accommodation.
2. An offender may request information or an accommodation by contacting the offender ADA coordinator verbally or in writing.
3. Offenders may submit requests for accommodation to any staff member who will forward the request to the offender ADA coordinator. Offenders may also directly route any written request for accommodation by using an Offender/Staff Request (OSR) form to the locally designated facility or program ADA staff member or the offender ADA coordinator.
4. When the disability is not obvious, the offender ADA coordinator, or designee, may request reasonable documentation of the disability. Reasonable documentation is information necessary to establish that an offender has a qualified disability. This includes external documentation and internal testing and screening conducted by the

Department. The offender may be asked to sign a release of information allowing the medical caregiver to respond to the Department.

5. Upon a determination that the offender has a qualified disability, the offender and the offender ADA coordinator, or designee, will determine what accommodation(s) would be most effective and reasonable. The list of [Accommodation Categories](#) may be used to assist this process, as may the Job Accommodation Network (<https://askjan.org/>). The Department will make the final determination of the reasonableness of an accommodation.
6. Offenders provided accommodations may be re-evaluated annually to ensure the accommodation is adequate and appropriate, the need for accommodation is ongoing, and no additional accommodations are needed. No accommodations shall be taken away from an offender unless there has been a change to a program, a new accommodation has become available, a documented change in the offender's disability status has occurred, or facility staff determine that it is necessary to remove the accommodation based on factors reasonably related to legitimate penological interests.

D. Accommodation Function in Offender Management Information System (OMIS)

1. All offender ADA accommodations will be documented in OMIS. Staff who may use this function in OMIS, will be trained on its use.
2. Department staff will check OMIS for documented ADA accommodations when an offender is new to a facility or program, needs services, or experiences other major events. Facilities and programs will define applicable major events in operational procedures.
3. Department staff will document in OMIS when a situational or continuous accommodation is provided. Situational accommodations will be documented every time one is provided. Continuous accommodations will only be documented when one is first issued.
4. Staff should always consult OMIS, if they have questions as to whether an offender is entitled to an accommodation.

E. Site-Specific Accommodations

1. Facilities and programs will make reasonable, site-specific accommodations for offenders with a verified disability.
2. Facilities and programs will adapt language in operational procedures to provide for accommodations to include, but not be limited to, count, body searches, and offender orientation.

F. Complaints of Disability Discrimination

1. If an offender believes that he or she has been subject to disability discrimination, he or she must report the allegation to the Department for prompt investigation and any appropriate actions.

- a. Offenders who are unsatisfied with a final decision on a request for an accommodation by the offender ADA coordinator or who are filing a complaint of disability discrimination may file a formal grievance in accordance with *DOC Policy 3.3.3 Offender Grievance Program*, and their facility or program's offender grievance procedure. In the case of a complaint of disability discrimination, the offender must file an informal resolution as required; however, the formal grievance will be processed regardless of whether the time limits set for filing the informal resolution were met.
- b. All requests, complaints, or grievances involving a disability issue should include specific facts, such as, person or persons involved, structure or barrier involved, the date, time, and place of the occurrence, what was done or said, and the names of any witnesses present.

G. Response to Requests and Complaints

1. Employees and designated personnel at contracted facilities and programs will immediately inform the offender ADA coordinator of any offender requests, complaints, or grievances involving a disability-related accommodation or discrimination. If the request, complaint, or grievance is unclear, staff shall meet with the offender for clarification.
2. The Department will act promptly to investigate and resolve all offender ADA requests, complaints, and grievances. Investigations shall be completed within 30 days, unless there are documented extenuating circumstances that make it impossible to complete the investigation. In those instances, the investigation shall be completed as promptly as possible.
3. A request may be denied if the accommodation is unreasonable or unnecessary, would result in undue financial or administrative burdens, constitute a direct threat, endanger the health or safety of any person, or fundamentally alter the inherent nature of the Department's business. After considering all resources, if a request is denied for these reasons, there must be a written statement outlining the reasons for the denial.

H. Record-Keeping Requirements

1. The offender ADA coordinator will retain all documentation, including an [ADA Accommodation](#) form, when necessary, pertaining to the request, grievance, or complaint and the ensuing investigation in a separate investigative file.
2. The Department will maintain the confidentiality of all medical information, unless otherwise provided by law. The Department will only disclose information about the request internally on a need-to-know basis to personnel involved in making or assisting in the implementation of the reasonable accommodation or resolution of the grievance or complaint.
3. The offender ADA coordinator will maintain statistical data regarding complaints, grievances, requests made pursuant to this policy, and the number of accommodations that are granted and will prepare an annual report on offender ADA activities to the

Clinical Services Division administrator and Department director that includes successes, challenges, and recommendations.

4. The Department may conduct annual internal audits to ensure compliance with ADA offender requirements to include interviews with offenders, interviews with staff and review of documentation.

V. CLOSING

Questions concerning this policy should be directed to the Department's offender ADA coordinator. Copies of this policy directive may be posted in offender law libraries.

VI. REFERENCES

- A. *49-3-205 MCA; 49-3-209 MCA; 53-1-203 MCA*
- B. *Americans with Disabilities Act of 1990 enacted July 26, 1990, codified at 42 USC 12010, as amended*
- C. *4-4054, 4-4142; ACA Standards for Adult Correctional Institutions, 4th Edition*
- D. *4-4429-1; ACA Standards Supplement, 2008*
- E. *DOC Policies 3.3.3 Offender Grievance Program; 4.1.1 Offender Admission Process; 4.1.2 Offender Reception and Orientation*

VII. ATTACHMENTS

[Accommodation Categories](#)

[ADA Accommodation](#)