

**NIC Large Jail Network  
Denver, Colorado  
January 2002**



**ADA and In-Custody Individuals**

**Santa Clara County  
Department of Correction**

**Chief Timothy P. Ryan**

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NIC INFORMATION CENTER**

HB 1920.90  
017434

RECEIVED JAN 10 2002

2-14-2002







# Complying with ADA in a Corrections Environment

## AT THE MILLENIUM'S

end, more and more correctional institutions were on the wrong side of litigation, forced to defend their efforts in the application of the Americans with Disabilities Act (ADA). Following the 1998 decision of the U.S. Supreme Court in *Pennsylvania Department of Correction v. Yeskey*, institutions must now provide adequate access to programs and services for inmates with disabilities. The decision in the case established that prisons and jails fall squarely within the statutory definition of "public entity."

Waiting for problems to occur in this arena is like watching the proverbial lit fuse burn down on a stick of dynamite. It is only a matter of time before the issue explodes. A systematic, proactive approach is the recommended alternative to lengthy and expensive litigation.

Like managers in many other institutions, we in the Santa Clara County Department of Correction (DOC) believed we were ahead of the curve in responding to the ADA. We had made efforts to address the needs of the mobility impaired and had introduced TDD machines, closed-caption televisions, amplified phones, and other assistive listening devices for deaf and hearing-impaired inmates.

Nonetheless, the DOC found itself in federal court in 1998 defending its actions in the case of *Padilla v. Ryan*, our version of *Yeskey*. The local inmate advocacy law firm, which filed this federal class action lawsuit, alleged that the DOC had failed to provide deaf and hearing-impaired inmates with full and equal access to facilities and programs and had demonstrated a policy and practice of discrimination toward this category of inmates.

The ADA seeks to dispel stereotypes and assumptions about disabilities and to assure equal opportunity, full participation, independent living, and economic self-sufficiency for disabled people. To achieve these objectives, the law prohibits covered entities from excluding people from jobs, services, activities, or benefits based on disability.

Not every disabled person is covered by the ADA, however. Certain standards must be met for a person to qualify for the Act's protection.

- To be considered "disabled" under the ADA, a person must have a

condition that significantly impairs a major life activity or have a history of such a condition, or be regarded as having such a condition.

- A disabled person must also be qualified for the job, program, or activity to which he or she seeks access. To be qualified under the ADA, a disabled person must be able to perform the essential functions of the job or meet the essential eligibility requirements of the program, activity, or benefit with or without an accommodation to his or her condition.

## THE ISSUE IN PADILLA

dealt with communication barriers specifically those that would prevent hearing-impaired individuals from equal access to programs, services, activities, and benefits. A public entity, such as a jail, must ensure that its communications with individuals with disabilities are as effective as communications with others which means that it must make available appropriate auxiliary aids and services where needed to ensure effective communication.

By LIEUTENANT KEVIN HEILMAN, Santa Clara County Department of Correction, San Jose, California.

Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include:

Qualified interpreters;

Notetakers;

Computer-aided transcription services;

Written materials;

Telephone handset amplifiers;

Assistive listening systems;

Telephones compatible with hearing aids;

Closed-caption decoders;

Open and closed captioning;

Telecommunications devices for deaf persons (TDDs);

Videotext displays; and

Exchange of written notes.

When making accommodations, it is important to consult with the individual requesting the accommodation to determine the most appropriate auxiliary aid or service, because that person is most familiar with his or her disability and is in the best position to know what will be effective. We should attempt to honor the individual's primary choice unless we can demonstrate that another equally effective means of communication is available or that use of the means chosen would result in a "fundamental alteration in the service, program, or activity" or impose "undue financial and administrative burdens."

It should be noted that resolving communication barriers will rarely place the entity in a situation of undue financial burden. In our situation, for example, an estimated cost of \$400,000 for installing visual alarms was not enough to support a claim of undue financial burden. It is the budget of the entire entity that is factored in when determining the validity of an undue financial burden claim, which, in our case, would have been the county's entire budget.

### **WHEN MUST JAILS**

provide these accommodations? As a rule, the entity must provide accommodation if the communication content will be "complicated, confidential, or important," according to the court ruling. In other situations, staff may use whatever manner of communication promotes understanding based on the circumstances and information conveyed.

Emergency situations hold special concerns and are exempt from the effective communication requirement. Under emergency circumstances, staff may use alternate methods of communication to gather information necessary to properly handle the situation. Once the situation is controlled and stable, the effective communication standard again applies. This standard has required us to return to the individual and, in a manner providing effective communication, verify the information collected during the emergency.

## **HEARING DISABILITY**

issues were first raised in Santa Clara County in November 1994. Local inmate advocacy attorneys presented the department with a draft letter outlining policies and procedures they recommended we implement to protect the rights of hearing-impaired inmates. Eleven of the 12 areas of concern addressed in the letter later became the foundation of injunctive relief in the *Padilla* settlement.

The concerns covered:

- The need for interpreters;
- Designated housing areas;
- Classification assessment and proper coding;
- Adequate medical screening;
- Notification of rights; and
- Emergency procedures.

The inmate advocacy attorneys contacted us again in 1995 to convey their concern over the department's lack of progress in addressing the needs of inmates with hearing impairments. The DOC responded by generating several memos directing staff to take specific actions when interacting with hearing-impaired inmates. However, no

formal policy was adopted at this time.

On May 13, 1996, a certain hearing-impaired offender was incarcerated in Santa Clara County and remained in the custody of the DOC until May 17. It was said that, during his incarceration, he did not have adequate access to telephone communications. As a result, he stayed an extra day in custody because the court was unaware of his need for interpretation services and had not made arrangements for an interpreter to be present for his hearing. The court had to reschedule his court appearance for the following day.

While the inmate was in custody, his wife, who was also hearing impaired, attempted to get information on her husband's status and location. Her efforts were hindered because the department was not adequately prepared to interact with the hearing-impaired public.

**SUIT WAS FILED IN APRIL**  
1998 in U.S. District Court on behalf of hearing-impaired individuals. *Padilla v. Ryan* alleged that the DOC failed to:

1. Ensure effective communication with and for arrestees, inmates, and jail visitors who are hearing-impaired;
2. Provide appropriate auxiliary aids and services such as qualified sign language interpreters and TTY devices;

3. Effectively inform and notify hearing impaired individuals of their rights under the law; and
4. Prevent a pattern of practice that violates the rights of hearing-impaired persons.

Although we contended that the DOC had not violated the rights of hearing-impaired inmates, after carefully considering the circumstances surrounding the lawsuit, we believed it to be in the best interest of all parties to negotiate a settlement. We negotiated in good faith and reached terms that we believe to be fair and just.

The negotiation team evaluated each proposed item in terms of the following criteria:

- Would it provide effective communication?
- Would it protect the safety of hearing-impaired inmates?
- Would it protect the rights of hearing-impaired inmates? and
- Would it jeopardize safety and security of the facility, staff, inmates, or visitors?

If the answers to these questions were favorable, the proposed item was adopted. The only item discussed which we believed to be unreasonable and an undue financial burden was a visual alarm system upgrade proposed for *all* inmate housing areas. We reached a compromise in which visual alarms

would be installed only where inmates had free egress from occupied structures.

**PERSON-TO-PERSON**  
communication barriers were first item of concern in terms of the injunctive relief items. To ensure that inmates with hearing impairments could communicate effectively, the DOC took the following steps:

- Outside vendors were contracted to provide sign language interpretation services. Each contract contains a stipulation requiring a response time not to exceed 11 days from notification.
- The medical screening questionnaire was revised to include questions specifically designed to identify persons with hearing impairments and other disabilities.
- The intake process was changed to require that a designated officer be assigned the task of walking each hearing-impaired inmate through the process and ensuring that effective communication is provided. We believe that sooner a hearing-impaired inmate is identified and the responsibility assigned to staff, the less likely we are to be accused of violating the inmate's rights.
- It was decided that staff would be used as interpreters only in emergency situations or instances in which the certified interpreter is delayed. In both of these situations,

tions, all information provided to a hearing-impaired inmate must be verified once the certified interpreter is present. Staff may use whatever means necessary to convey information to a hearing-impaired inmate during an emergency. For routine daily interactions, staff may use notes, gestures, sign language, written text, and/or lip reading to convey information, as long as the inmate understands it.

## POLICIES ALSO ENSURE

that hearing-impaired individuals have access to auxiliary aids, including:

- Assistive listening devices (amplification systems);
- Amplified telephones;
- Permanently installed and portable TDD units; and
- Closed-caption-capable televisions.

The portable TDD machines are accessible to inmates if a permanent phone becomes inoperable or if the inmate is housed in an area where there is no access to a permanently installed TDD phone unit. Amplified telephones have been installed in designated housing areas and in all non-contact public visiting areas. These visiting booths have amplified phones on both the inmate and public sides of the glass.

Additional injunctive relief measures were also implemented.

- All public announcements over public address systems must be relayed individually to hearing-impaired inmates. Examples include announcements for interviews, appointments, court appearances, meals, medical appointments, and medication.

- An automated information system allows the hearing-impaired public to obtain custody and facility information. The system allows persons also using a relay service to option out of the automated system and speak with a live operator. It also enables others to gain information in Spanish, Vietnamese, or English.

- The DOC provides batteries and prompt repair for broken or damaged hearing aids. The medical department maintains a stock of hearing-aid batteries and arranges for and monitors all hearing aid repairs conducted by outside vendors. The DOC will assume no responsibility to purchase hearing aids for persons who come into custody without their aids, unless compelled to do so by a court order. A process has been implemented that allows family members to bring hearing aids into the facility for inmates who were not in possession of the aids at the time of arrest. These aids are scrutinized for security concerns before being given to the inmate.

- Hearing-impaired inmates are allowed to possess paper and pencil for daily communications with staff, as long as those items do

not conflict with the safety and security of the facility.

- Our classification system helps us assess the housing needs of a hearing-impaired inmate, alert custody staff to the inmate's hearing impairment, and notify the court of the inmate's condition and accommodation needs.
- To ensure that hearing-impaired inmates have equal access to DOC programs, program staff must conduct an assessment interview within 72 hours of intake with each hearing-impaired inmate who stays in custody. This interview determines programs the inmate may be interested in, the accommodation or options that will be necessary for equal program participation, and the inmate's program eligibility. Staff have reviewed each program provider to determine the provider's ability to accommodate disabled persons. Each provider was required to submit a plan for integrating disabled persons, especially hearing-impaired persons, into their programs.
- We now notify hearing-impaired inmates of their rights through several media. Our research determined that the first hour of incarceration is very frustrating and stressful for hearing-impaired inmates, so we created a short video that conveys important information through sign language and closed-captioning. The video briefly explains inmates' rights, the intake process, and our expec-

tations. It is shown to the inmate during the first hour while he/she waits for the interpreter to arrive. Written notifications in three languages have been posted in all inmate housing. Inmate rule books now include specific sections to inform hearing-impaired inmates of their rights. The inmate orientation video, which conveys information on conditions of long-term confinement, now has a closed-captioned window featuring a sign language interpreter.

- During emergency situations, it is the officer's responsibility to know the needs of inmates with special concerns and to ensure that they are evacuated immediately from the affected area.
- To assist staff in identifying hearing-impaired inmates, the inmate is provided with a specially colored wristband that staff have been trained to recognize.
- There are designated housing areas for the hearing-impaired. Each is provided with closed-captioned televisions, access to TDD machines, amplified telephones, and access to programs.

## THE LAST PIECE OF THE

injunctive relief is training for all custody and non-custody staff. The training focuses on newly adopted policies and procedures, sensitivity training, and use of hearing-impaired communications equipment.

How does a department efficiently train 700 people in a short time and

ensure that everyone is on the same page? We resolved this problem by training the line supervisors and training officers first—approximately 225 persons in a 2-month period. This group was responsible for providing stability on ADA issues until the rest of the staff could be trained.

To assist those who were initially trained, we appointed an ADA Coordinator for Inmate Concerns and two ADA Divisional Representatives for Inmate Concerns. The coordinator oversees all ADA compliance, and the divisional representatives are responsible for the day-to-day monitoring and tracking of ADA processes. By the end of this fiscal training year, the rest of the staff will have completed the required training.

## THE ADA WAS DESIGNED

to be enforced by private attorneys filing suits against private and public entities. One problem you will most surely face, if you find yourself in litigation over ADA issues, is the reluctance of counsel to take the case to jury trial when the plaintiff is a person with a disability. With that in mind, we recommend that, on initial notification of a problem, you take the initiative, become proactive, and aggressively address the problem to develop dependable solutions.

Once you have been given notice of the problem, it is important to take positive action to resolve it, as this will demonstrate your intention to act in good faith. Our biggest

mistake was that we did not aggressively implement solutions, because we did not completely understand the potential impact—both financial and procedural—on our system. ADA issues affect only a small percentage of inmates, but if they are not corrected they can have a significant impact on your jail system.

It is absolutely necessary to seek the advice of an expert in the field of ADA regulations, because each request for accommodation must be judged on its own merit. One of the major problems we encountered was that there were very few consultants with expertise in both corrections and ADA issues. As a result, the corrective action process was slowed as the ADA specialists were familiarized with the corrections environment.

The assistance of ADA experts is extremely important during the period when you attempt to assess the validity of the complaint and develop an action plan to correct the problems. Experts are also very helpful when you need to analyze possible accommodation options.

## ADA ACCOMMODATION

significantly change the corrections environment and may initially be difficult for staff to embrace. Therefore, we recommend that you audit staff behaviors frequently and aggressively until staff fully understand and support ADA-related concepts.

As the basic premise of ADA regulations requires each request for accommodation to be evaluated on its own merit, we also recommend keeping the responsibilities of line staff simple and forcing all evaluation and decisions to be made by supervisors. By doing so, you will increase the consistency of your decisions.

Most importantly, make sure that ADA accommodations are not implemented at the sacrifice of safety and security of staff, inmates, or your facilities.

**THE FACT THAT DISABLED**  
Inmates can invoke the protections of the American with Disabilities Act is a sobering reality in the field of corrections—and a reality that will, in all likelihood, be present for quite some time. Over the next few years, we will see a struggle in the courts as they wrestle to further define ADA regulations and their applications.

However, we don't anticipate that the basic premise of the *Yeskey* decision will change or be reversed. Corrections officials will be compelled to address the issues and manage correctional environments that provide inmates with disabilities equal access to programs, services, activities, and benefits.

In Santa Clara County, we have benefitted in several ways from having to address the hearing-impaired/ADA issue. Staff now have a keener awareness of the needs of inmates with disabilities. They understand

that ensuring that inmates with disabilities are treated with dignity is morally and legally the right thing to do. The DOC was forced to assess other types of disabilities and take action to remove any barriers. We still have work to do in this area, but we have made significant improvements.

I hope that sharing our experiences will assist you in proactively addressing ADA issues. We hope that you will review your processes and take the corrective steps necessary to avoid the possibility of costly litigation. ■

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#### FOR MORE INFORMATION

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## COUNTY OF SANTA CLARA

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<b>Department of Correction</b>	<b>Policy Number:</b> 13.11 <b>No. of Pages:</b> 14 <b>Date of Origin:</b> 04 Mar 1999 <b>Date of Revision:</b> 11 Dec 2001
<b>Policy and Procedure Manual</b>	
<b>Chapter:</b> Special Management/Classification	<b>Subject:</b> Custody A.D.A. Plan
<b>Supersedes:</b> All Previous Orders	<b>Distribution:</b> Unrestricted
<b>References:</b> ACA 3-ALDF-2C-13, 3E-04, 3E-11, 4B-02, 4B-03, 5A-03 American's With Disabilities Act of 1990, Title II Section 504 of the Rehabilitation Act of 1973	
<b>Signature of Issuing Authority</b>	<b>Current Policy Review</b>
Timothy P. Ryan, Chief of Correction	<b>Date of Review:</b> 11 Dec 2001 <b>Revisions Made:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No

**POLICY:** It is the policy of the Department of Correction that the policies and procedures established by the Department shall not discriminate against any person protected by the Americans With Disabilities Act in the provision of services, programs and activities administered for program beneficiaries and participants.

**PURPOSE:** To set guidelines for compliance with Title II of the Americans With Disabilities Act (A.D.A.) for all inmates incarcerated by the Department of Correction and for those persons having legitimate business within the facilities of the Department.

**DEFINITIONS:** A.D.A.: American's With Disabilities Act

Disability: For the purposes of coverage under A.D.A., a person with a disability is defined as an individual who:

1. Has a physical or mental impairment that substantially limits one or more major life activities; or
2. Has a record or history of such an impairment; or
3. Is perceived or regarded as having such an impairment.

Major Life Activity: A basic function that the average person can perform with little or no difficulty.

Direct Threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Auxiliary Aids and Services: Equipment, devices or services to ensure effective communication, including but not limited to, qualified interpreters,

assistive listening devices and systems (ALD), computer assisted real time transcription services (CARTT), telecommunication devices for the deaf (TTY/TDD), amplified telephones, visual alarms, written materials, closed caption decoders, open and closed captioning, video test displays and note takers.

Qualified Interpreter: An individual who is able to interpret effectively, accurately and impartially, both respectively and expressively, using any necessary specialized vocabulary.

Teletext Device for the Deaf (T.D.D.): A machine that allows a deaf person to use the telephone for written conversation.

E.I.S.: Executive Information System

S.P.R.B. Code: A coded sequence of numbers and letters designated to create a description of each inmate by his/her personal characteristics and in custody status.

## **PROCEDURE:**

### I. Compliance with the American's With Disabilities Act (A.D.A.)

- A. The Santa Clara County Department of Correction will not discriminate against inmates or members of the public on the basis of disability in providing access to its facilities, programs, services and activities.
  1. Attachment 1, Inmate Notice, shall be prominently posted in all inmate-housing units.
  2. Attachment 2, Public Notice, shall be prominently posted at the public entrances of all facilities.
- B. A.D.A. covers individuals who have a physical or mental impairment that substantially limits one or more major life activities, who have a record of such impairment, or who are regarded as having such impairment.
  1. Eligible individuals are entitled to an equal opportunity to participate in programs, services or activities offered by the Department of Correction.
  2. Temporary conditions are generally not covered by A.D.A. and certain conditions are expressly excluded from A.D.A. coverage.
- C. A supply of Auxiliary Aids and Services to ensure effective communication including but not limited to assistive listening devices and systems (ALD), computer assisted real time transcription service (CARTT) and

telecommunications devices for the hearing-impaired (TTY/TDD) are available for use by inmates, attorneys, staff, and the public upon request.

- D. Disabled visitors shall be afforded the same visiting privileges as non-disabled visitors.
- E. The Department of Correction shall be responsible for ensuring that all its facilities are accessible to staff, inmates, visitors, volunteers and the public. The Department of Correction will assist the County in evaluating the accessibility of facilities and in providing any corrective actions that might be necessary to ensure access is maintained.

## II. Accommodations for disabled individuals

- A. Disabled visitors may verbally request a reasonable accommodation to the officer assigned to the lobby entrance or, in advance, through a written request to the Division Commander.
- B. Disabled volunteers may request reasonable accommodations through the Program's Unit.
- C. Disabled inmates may request a reasonable accommodation as follows:
  - 1. The inmate may notify custody or medical staff verbally or in writing of his or her request or concern.
  - 2. The inmate may submit an *A.D.A. Request for Accommodation Form*.
  - 3. The inmate may submit an *Inmate Grievance Form* regarding an issue with his or her disability.
  - 4. A third party such as an inmate's family member or friend may request that a reasonable accommodation on behalf of the inmate.
- D. Staff shall submit an employee's report in any situation where an inmate claimed a disability and was not accommodated, or where a member of the public requested an accommodation and was not accommodated.
- E. Requests for participation in a service, program, or activity shall be promptly reviewed by the appropriate personnel. When participation would pose a direct threat to the individual or others, the individual does not need to be accommodated.

## III. Forms

- A. The *Inmate Disability Evaluation Form* shall be used by custody or medical staff to report and verify an inmate's disability. Medical staff shall determine and

document on the form whether the inmate does or does not have a disability. Classification staff shall determine the appropriate housing. The form shall be signed by the custody sergeant and the Watch Commander, and a copy shall be forwarded to the Division's A.D.A. representative by the Watch Commander.

- B. The *Hearing-impaired Tracking Form* shall be used by intake-booking staff to track inmates who are deaf or hearing-impaired and ensure that the appropriate communication services or accommodations are provided.
- C. The *A.D.A. Request for Accommodation Form* may be used by an inmate to formally request accommodation for a disability. The inmate must sign the form at the bottom and turn it in to custody or medical staff. After review of the form, medical staff must sign the form and determine if the inmate is or is not eligible for an accommodation.
- D. The *A.D.A. Coordinator Review Form* shall be used by the A.D.A. Coordinator when an inmate accommodation has been denied, a grievance has been filed, an alternate accommodation is proposed, a safety and security issue exists related to the accommodation request, or there is a financial/administrative issue.
- E. The *Inmate Grievance Form* is a standard Department form that may be used by an inmate to file a grievance including a grievance related to a disability or accommodation.
- F. The *Notification of Need for Interpreter Services in Court* form is a memorandum prepared Classification staff to notify the court interpreter coordinator to provide requested services to assist an inmate in his or her court proceedings.

#### IV. Identifying disabilities when inmates are booked/processed

- A. There is a medical screening process at intake-booking that gives the Department the ability to identify most disabilities or requests need for accommodations prior to the housing of the inmate.
  - 1. It is the responsibility of intake-booking custody staff, medical staff and processing staff to assess inmates upon admission for evidence of a disability or special management need. This assessment information shall be entered on the Medical/Psych Clearance Form and, if applicable, on the *Inmate Disability Evaluation Form*.
    - a. The inmate's prior custody or medical records may indicate previous accommodations or requests.
    - b. Custody or medical staff may observe and report what appears to be a disability that would:
      - 1). impact the inmate's housing;

- 2). affect the inmate's program access; or
    - 3) present a safety or security concern for the inmate.
  2. It is the responsibility of custody staff to ensure the inmate's safety and immediately advise a supervisor when an inmate meets or appears to meet the criteria of a disabled individual for the purposes of A.D.A.
  3. It is the responsibility of medical staff to sign and verify the *Inmate Disability Evaluation Form*, and forward a copy to Classification. Medical staff shall note on the form if the disability impacts the inmate's housing.
  4. It is the responsibility of classification staff to interview the inmate and designate the appropriate housing unit based on disability and the classification plan.
- B. Intake-booking process for inmates who have been identified as hearing-impaired.
1. It is the responsibility of the intake-booking supervisor or processing supervisor to initiate a *Hearing-impaired Tracking Form*, when applicable, for an inmate identified to be hearing-impaired. An officer shall be assigned to track the inmate through the booking/classification process.
    - a. Medical staff shall ensure the inmate is able to effectively communicate his or her medical information. If necessary, medical staff shall utilize a Qualified Interpreter. When a qualified interpreter does not arrive within an hour of being contacted, medical staff shall advise the intake-booking supervisor to make the necessary arrangements to provide a qualified interpreter as soon as possible.
    - b. Medical staff shall ensure the inmate is issued a "special needs" wristband. The wristbands are color-coded for identification purposes. Persons who are hearing-impaired are issued a green wristband.
    - c. Medical staff shall provide replacement batteries for hearing aids and/or obtain needed repairs for the hearing aids.
    - d. The intake-booking supervisor or designee shall fax the completed *Hearing-Impaired Tracking Form* to Main Jail Administration (Fax:971-3358) and the Programs Unit (Fax:957-5862) when a hearing-impaired inmate is booked at the Main Jail Complex.
    - e. The processing supervisor or designee shall fax the completed *Hearing-Impaired Tracking Form* form to Elmwood

Administration (Fax:946-3847) and the Programs Unit (Fax:957-5862) when a hearing-impaired inmate is received as a commit at the Elmwood Complex.

- f. The intake-booking supervisor, processing supervisor or designee shall ensure hearing-impaired inmates are shown the Department's information video for the hearing-impaired that describes the intake process. This video contains closed-captioned script, voice script and sign language. If a hearing-impaired inmate is going to stay and be housed, he or she shall be shown the Inmate Orientation Video (closed-captioned) and shall be given an inmate rulebook with the hearing-impaired information insert. The inmate rulebook is available in English, Spanish and Vietnamese.
2. It is the responsibility of classification staff to interview the inmate and designate the appropriate housing unit based on the disability and the classification plan.
  - a. Classification staff shall ensure that hearing-impaired inmates are easily identified by staff through the SPRB code and the classification card.
  - b. When a hearing-impaired inmate requires a qualified interpreter or other Auxiliary Aid or Service in court, the Classification Officer conducting the initial risk assessment interview will complete the first three items on the *Notification of Need for Interpreter Services in Court* form and forward the form to the Classification Administrative Sergeant or designee.
    - 1) The Classification Administrative Sergeant or designee shall query CJIC (Criminal Justice Information Control) every court day at 7am and 10am until the inmate's court information is available.
    - 2) When the court information is available, the Classification Administrative Sergeant or designee shall complete the *Notification of Need for Interpreter Services in Court* form and immediately fax it to the court's interpreter coordinator.

#### V. Identifying disabilities when inmates have been housed.

- A. For those inmates with disabilities or requests for accommodation that were not identified at intake booking or processing, there are Inmate Notices posted in the housing units that inform the inmates how to get information regarding an A.D.A. issue or how to request an accommodation.

- B. It is the responsibility of custody and medical staff to assist in identifying an inmate who may need an A.D.A. accommodation and to be alert for visual indications, verbal statements or written requests.
- C. When custody or medical staff become aware of an inmate with a disability or request for disability accommodation, they shall complete the *Inmate Disability Evaluation Form* and immediately advise the supervisor.
- D. The supervisor shall ensure the *Inmate Disability Evaluation Form* is forwarded to medical, classification and the Watch Commander.

## VI. Reasonable Accommodations for the Hearing-impaired

- A. Division Commanders shall ensure hearing-impaired inmates are provided with notice of their right to access Auxiliary Aids and Services necessary for effective communication.
- B. Division Commanders shall ensure TTY/TDD machines, Assistive Listening Devices, and amplified phones are supplied at their facility and are made available to hearing-impaired inmates.
  - 1. TTY/TDD machines and Assistive Listening Devices shall be made available to inmates upon request.
  - 2. Time limits shall not be imposed on the use of the TTY/TDD machines absent exigent circumstances.
  - 3. A written record shall be maintained at each Division for the use of portable TTY/TDD machines.
  - 4. At least one telephone in each housing unit shall be an amplified telephone that allows the user to control the level of amplification.
- C. DOC staff may communicate with hearing-impaired inmates for simple daily interactions in the method most effective for the situation. Custody staff shall allow hearing-impaired inmates to utilize a pad and writing implement as a means of communication; however, such items may be temporarily removed when detrimental to the safety of the inmate, staff, others or the security of the facility.
  - 1. Custody staff may utilize writing materials as a means to communicate with a hearing-impaired inmate when requested to do so by the inmate.
  - 2. Custody staff shall document on an employee's report when writing materials are taken from a hearing-impaired inmate due to safety or security concerns.

3. Custody staff shall return the writing materials to the inmate as soon possible after the safety or security concerns are resolved.
- D. The Department of Correction shall make qualified interpreter services available on a 24-hour basis for complex, confidential or important communication with a hearing-impaired inmate. Absent exigent circumstances, DOC staff certified in sign language shall not be used as interpreters for complex, confidential or important communication. Complex, confidential or important communication includes, but is not limited to communication during the booking process, the classification interview, a medical or mental health interview, or during a disciplinary hearing.
- E. Division Commanders shall ensure closed-captioned televisions are made available in designated hearing-impaired inmate housing areas, intake-booking areas and processing areas.
- F. Division Commanders shall ensure there is a process for hearing-impaired inmates to be notified of emergencies, interviews, appointments, court appearances, meals, medical assessments, medication times, visiting and other similar announcements and information regarding inmate services.
  1. Communication to the hearing-impaired for inmate services may be provided by personal contact or written notes.
  2. Visual alarms are utilized at each facility; however, notification of an emergency evacuation shall be done by individually contacting the hearing-impaired inmates in the facility and ensuring the inmates are assisted in their evacuation.
  3. The safety and accountability of hearing-impaired inmates shall be a priority for custody staff during an emergency.
- G. Division Commanders shall ensure accommodations are made available to hearing-impaired visitors.
  1. The appropriate signage for hearing-impaired visitors shall be posted in each facility's public areas.
  2. A minimum of two amplified telephones shall be provided in each visiting area and shall be maintained in working order.
- H. The Administrative Booking Manager shall ensure hearing-impaired persons have effective access to jail information by maintaining an information system that may be reached through a relay service. The information system shall allow a hearing-impaired caller to communicate with an employee of the Department of Correction through a relay service.

## VII. Divisional A.D.A. Representative Responsibilities

- A. Division Commanders shall ensure that their division has an A.D.A. Representative.
- B. The A.D.A. Representative shall be responsible for the following:
  - 1. Keeping the Department's A.D.A. Coordinator informed of all requests, complaints or grievances related to A.D.A. issues.
  - 2. Creating and maintaining a file of for all completed A.D.A. forms.
  - 3. Faxing a copy of completed forms to the Professional Compliance and Audit Unit (PCAU).
  - 4. Providing training to facility staff on the Department's policy, the issues of A.D.A. in a custodial environment, how to respond to A.D.A. requests or grievances, intervention, and responsibilities.
  - 5. Notifying the Transportation Unit when an inmate may require transportation accommodations, e.g. wheelchair van.
  - 6. Notifying the Program's Unit when an inmate may require an accommodation to access program services.
  - 7. Reviewing all claims, complaints and grievances, and ensuring all aspects of the process have been completed.
  - 8. Following-up on all received complaints or grievances to ensure they are finalized.

## VIII. Watch Commander Responsibilities

- A. The Watch Commander at each facility is responsible for reviewing all *Inmate Disability Evaluation Forms* and *Hearing-impaired Tracking Forms* that have been completed for inmates that require an accommodation to ensure the forms are completed correctly. The Watch Commander will acknowledge his or her review by signing the forms. He or she shall immediately forward the *Hearing-impaired Tracking Forms* to the Division's A.D.A. Representative and the *Disability Evaluation Forms* to the Division's Administration.
- B. The Watch Commander will review the actions taken to ensure that:
  - 1. The accommodation was adequate and appropriate.
  - 2. The notifications to classification, medical, programs and the A.D.A. Representative were completed.

3. Documentation and/or reports were generated to record cases in which the Department could not accommodate.
- C. The Watch Commander shall review every response to requests, complaints and grievances and ensure the response and actions taken are appropriate.

IX. Medical staff responsibilities

- A. All requests for disability verification or accommodation are forwarded to medical for review. It is the responsibility of medical staff to verify an inmate's disability and provide custody and classification staff with housing recommendations.
- B. The medical supervisor shall ensure that medical staff review and complete the appropriate section on all *Inmate Disability Evaluation Forms* and:
  1. Determine need for a Medical Release Form
  2. Ensure all necessary notifications are made
  3. Follow-up with the division's A.D.A. Representative each month to ensure the accommodations are still appropriate or necessary.
- C. Medical staff review the medical status of any inmate who is to be transferred from one facility to another. The medical supervisor shall ensure custody and classification staff are notified of any disability accommodation for an inmate who is to be transferred to another facility.

X. Classification staff responsibilities

- A. Classification staff are responsible for reviewing all *Inmate Disability Evaluation Forms* and ensuring that the inmate is housed appropriately based on the interview with the inmate, the information provided on the form and the information provided by medical staff.
  1. When an inmate has a verified disability that requires an accommodation, classification staff shall update the inmate's SPRB code to identify that the inmate has an impairment/disability.
  2. When an inmate's disability requires assistance in communication to access the courts, the Classification Commander shall ensure the courts are notified before the inmate's first court appearance.
  3. When an inmate is hearing-impaired, he or she shall be housed in a housing unit designated for the hearing-impaired. These designated housing units shall afford equal access to programs and services based on security level.

- B. The Classification Commander is responsible for reviewing all completed copies of the *Inmate Disability Evaluation Forms* and ensuring that the inmate is properly housed.
- C. Classification staff shall coordinate with medical staff to ensure A.D.A. identified inmates that are to be transferred to another facility are identified in a manner that would be apparent to staff at the receiving facility.

## XI. Programs staff responsibilities

- A. Inmates with disabilities will be afforded access to all services, programs and activities for which they meet eligibility criteria. Access will only be denied if their participation would pose a documented direct threat to themselves, others or if their participation would fundamentally alter the program.
  - 1. The Division A.D.A. Representative shall forward to Programs any requests by inmates who need reasonable accommodation to participate in services, programs or activities.
  - 2. Classification staff shall notify Programs when a hearing-impaired inmate is admitted at the Main Jail. The intake-booking supervisor shall fax the completed *Hearing-impaired Tracking Form* to Programs.
  - 3. Programs staff shall interview each hearing-impaired inmate as soon possible but no later than 72 hours excluding weekends and holidays to determine the appropriate Auxiliary Aids or Services needed for effective participation by the inmate in a program.
    - a. Programs staff shall ensure there is effective communication with the inmate during the assessment interview.
    - b. Programs staff shall advise the inmate that he or she may request additional program services information by telephone or in writing after the initial screening.
- B. Programs staff will make the necessary arrangements for the accommodation of inmates needing a reasonable accommodation to participate in program activities. Accommodations that pose an undue hardship (cost) or an administrative burden for the Department shall be referred to the Programs Commander and may be denied.
  - 1. Programs staff may provide Computer Assisted Real Time Transcription Services (CARTT) upon request for hearing-impaired inmates to participate in a program.
  - 2. Requests for (CARTT) must be made in advance of the classroom instruction and shall be granted on a case by case basis.

- C. Programs staff shall consult with the Department's A.D.A. Coordinator in all cases where questions arise as to granting reasonable accommodations for inmates.

XII. Transportation staff / Main Jail Court Movement staff responsibilities

- A. The court and the inmate's housing affect whether an inmate is directly transported to court from the facility or the inmate is brought to the Main Jail court holding area to await movement to court.
1. Transportation staff and Main Jail court movement staff shall review the court lists each day and check the inmate's SPRB code. The SPRB code is used to identify if an inmate may have special needs.
  2. For inmates with a verified disability, Transportation staff or Main Jail Court movement staff shall contact the inmate's housing unit or medical staff to determine if special arrangements are needed for the inmate's transportation to court (e.g a wheel chair van.)
- B. Transportation staff or Main Jail Court Movement staff shall immediately advise a supervisor when circumstances prevent their ability to transport the inmate to court.

XIII. Training for staff

- A. It is the Training Manager's responsibility to ensure that staff receive training on the American's with Disabilities Act and how to manage and provide services for the hearing-impaired.
- B. It is the Division Commander's responsibility at each facility to ensure that staff receive additional training at the Divisional level regarding Auxiliary Aids and Services for the hearing-impaired.
1. Assistant Division Commanders shall ensure that Watch Commanders and Supervisors at their facility are familiar with the process for hearing-impaired inmates. This process shall include, but not be limited to, the following:
    - a. Inspection, maintenance and location of hearing-impaired equipment.
    - b. Process for notification to other units when a hearing-impaired inmate is in custody.
    - c. Assignment of a designated officer to track the booking process of a hearing-impaired inmate using the *Hearing-impaired Tracking Form*.

2. Training shall be ongoing in consideration of turnover or reassignments

#### XIV. Grievance Process

- A. Every effort shall be made to immediately resolve any grievances related to the accommodation of inmates with validated disabilities.
- B. Inmates shall be instructed by staff to use the standard Inmate Grievance Form to submit grievances regarding A.D.A. issues.
  1. When an inmate submits a grievance, the officer will determine if the inmate's concern is a request or a grievance. If the inmate is making a request, the officer will advise the inmate to complete an A.D.A. Request for Accommodation Form. If the inmate has a grievance, the officer will immediately forward the grievance to his or her supervisor.
  2. The Watch Commander shall review all grievances. The supervisor shall note on the grievance when the inmate was not previously identified as having a disability.
- C. All grievances shall be forwarded to the Division's A.D.A. Representative for further processing.
- D. The A.D.A. Divisional Representative shall review all grievance forwarded by the Watch Commander and shall:
  1. Enter all grievance information in the E.I.S. database for tracking purposes.
  2. Attempt to resolve grievances that have not been resolved.
  3. Notify the Department's A.D.A. Coordinator regarding the status of grievances.
- E. The Department's A.D.A. Coordinator shall review the completed grievances and complete an official response to the inmate.

#### XV. Disciplinary Process

- A. When a disabled inmate, as defined by A.D.A. is the subject of a disciplinary process that could deprive him or her of any privilege or right afforded to all other inmates, the Disciplinary Officer shall ensure that the inmate understands the charges against him or her.
  1. If the inmate is hearing-impaired, appropriate arrangements shall be made so that the inmate understands all phases of the disciplinary process.

2. If the inmate is developmentally disabled or mentally ill, the Disciplinary Officer shall use his or her discretion to make any necessary accommodations necessary for the inmate to understand and defend the charges.
- B. When a disabled inmate, as defined by A.D.A., is the subject of a disciplinary process, the Disciplinary Officer shall advise the Department's A.D.A. Coordinator.

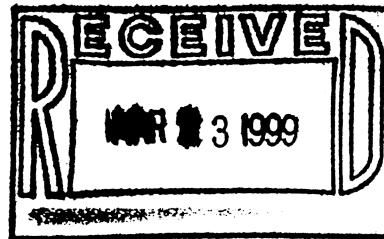
#### XVI. Policy Revision

- A. All Department policies will be reviewed not less than once a year. The Professional Compliance and Audit Unit will establish an annual schedule identifying policies to be reviewed during a specific month.





**FILE COPY**



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28 **UNITED STATES DISTRICT COURT**

29 **NORTHERN DISTRICT OF CALIFORNIA**  
(at San Jose)

30 ANTHONY PADILLA, CRISS BROWN, JILL ) Case No. C-98-20309-RWM-EAI  
31 BROWN, and BRUCE LAMBERT, individually and on )  
32 behalf of themselves and all others similarly situated, ) SETTLEMENT AGREEMENT  
33 )  
34 Plaintiffs, )  
35 )  
36 v. — ) (Civil Rights Action, 42 U.S.C. §1983)  
37 )  
38 TIMOTHY RYAN, Chief of Correction at the Santa )  
39 Clara County Department of Correction; SUSAN )  
40 CHAVEZ, Director of Office of Pretrial Release )  
41 Services; BLANCA ALVARADO, JAMES D. BEALL, ) (CLASS ACTION)  
42 Jr., DONALD F. GAGE, PETER McHUGH, and S. )  
43 JOSEPH SIMTIAN, Members of the Santa Clara )  
44 County Board of Supervisors, in their official capacities, )  
45 )  
46 Defendants. )

SETTLEMENT AGREEMENT  
Case No. C-98-20309-RMW-EAI

**SETTLEMENT AGREEMENT**

Plaintiffs ANTHONY PADILLA, CRISS BROWN, JILL BROWN and BRUCE LAMBERT, individually and  
on behalf of themselves and all others similarly situated, and defendants TIMOTHY RYAN, Chief of Correction at the  
Santa Clara County Department of Correction; SUSAN CHAVEZ, Director of Office of Pretrial Release Services;  
BLANCA ALVARADO, JAMES D. BEALL, Jr., DONALD F. GAGE, PETER McHUGH, and S. JOSEPH SIMITIAN,  
Members of the Santa Clara County Board of Supervisors, in their official capacities, in the above-captioned litigation, by  
this Settlement Agreement ("Agreement"), intend to fully resolve, discharge and settle claims against the defendants in  
this action subject to the terms and conditions of this Agreement.

IT IS HEREBY STIPULATED TO AND AGREED by and between the plaintiffs and defendants as follows:

L Plaintiffs commenced the above-entitled civil rights class action against defendants alleging a pattern  
and practice of discrimination against deaf and hard-of-hearing inmates and visitors at the Santa Clara County  
Department of Correction, in violation of Federal and State of California law, including Title II of the Americans with  
Disabilities Act of 1990 and relevant implementing regulations, Section 504 of the Rehabilitation Act of 1973 and  
relevant implementing regulations, the California Unruh Civil Rights Act, the California Public Accommodations Law,  
the Eighth and Fourteenth Amendments to the U.S. Constitution, and Article I, Sections 7 and 17 of the California  
Constitution. Plaintiffs' action seeks injunctive relief, declaratory relief and damages.

II The parties agree the U.S. District Court has jurisdiction over the parties and subject matter of the  
above-entitled action and that the Court has the power to enforce this Agreement, and each party waives any right to assert  
a claim that the Court was required to make findings of fact or conclusions of law other than those contained in this  
Agreement.

III. Should any portion of this Agreement be found at any time to violate a provision of the U.S. or  
California Constitutions, federal or state statutes; or other laws, the remainder of the Agreement shall remain in full force  
and effect.

IV. Should this Agreement be found to be unenforceable under the jurisdiction of the U.S. District Court, it  
shall remain enforceable in California Superior Court, and the parties agree to submit to the jurisdiction of the Superior  
Court in and for Santa Clara County for the enforcement of the provisions of this Agreement.

Definitions

V. The following terms have the meanings specified below for purposes of this Agreement:

A. **Auxiliary Aids and Services.** "Auxiliary Aids and Services" means equipment, devices or services to ensure effective communication, including but not limited to qualified interpreters, assistive listening devices and systems (ALD), computer assisted real time transcription services (CARTT), telecommunication devices for the deaf (TTY/TDD), amplified telephones, visual alarms, written materials, closed caption decoders, open and closed captioning, video text displays, and notetakers.

B. **Board of Supervisors.** "Board of Supervisors" means Blanca Alvarado, James D. Beall, Jr., Donald F. Gage, Peter McHugh, and S. Joseph Simitian, in their official capacities as members of the Santa Clara County Board of Supervisors.

C. **Defendants.** "Defendants" means Timothy Ryan, Chief of Correction at the Santa Clara County Department of Correction; Susan Chavez, Director of Office of Pretrial Release Services; Blanca Alvarado, James D. Beall, Jr., Donald F. Gage, Peter McHugh, and S. Joseph Simitian, Members of the Santa Clara County Board of Supervisors, in their official capacities.

D. **Defense Counsel.** "Defense Counsel" means the Santa Clara County Office of County Counsel, including but not limited to County Counsel Ann Miller Ravel, and Deputy County Counsel assigned to the case.

E. **DOC.** "DOC" means the Santa Clara County Department of Correction and all of its departments, employees, officials, agents and assigns, at each of its facilities.

F. **Effective Date of Settlement.** "Effective Date of Settlement" means the date of final approval by the court as defined in section XV.

G. **Inmate.** "Inmate" means an individual brought to the DOC to be either booked and released or booked into the custody of the DOC, including physical custody at DOC facilities or participating in any of its programs.

H. **Litigation.** "Litigation" means the action Padilla, et al. v. Ryan, et al., Case No. C-98-20309-RMW-EAI, filed in U.S. District Court for the Northern District of California, San Jose Division, on or about April 7, 1998.

L. **Notice.** "Notice" means the Notice of Settlement of Class Action and Settlement Hearing attached hereto as Exhibit A.

J. **Plaintiffs.** "Plaintiffs" means Anthony Padilla, Criss Brown, Jill Brown, Bruce Lambert individually and on behalf of themselves and all others similarly situated.

K. **Plaintiffs Counsel.** "Plaintiffs Counsel" means the Public Interest Law Firm, Disability Rights Education & Defense Fund, Inc., California Center for Law & the Deaf, Inc., and the law firm of McCutchen, Doyle, Brown & Enersen, LLP.

L. **Programs.** "Programs" as defined by the Department of Correction and used in this Agreement, and not as defined and used in the Americans with Disabilities Act (ADA), means all programs, classes, and other group activities for inmates such as Alcoholics Anonymous (AA), Drug and Substance Abuse classes, Anger Management, GED, computer classes, art classes, Industries, and Day Release Programs. See attached Exhibit B, list of programs currently offered by the DOC.

M. **Representative Plaintiffs.** "Representative Plaintiffs" means Anthony Padilla, Criss Brown, Jill Brown and Bruce Lambert.

N. **Services.** "Services" means all services provided for inmates such as telephone access, visiting, television, and medical and mental health care and treatment.

O. **Settlement Class.** "Settlement Class" means a class certified under Federal Rules of Civil Procedure 23(b)(2), including all deaf and hard-of-hearing inmates and visitors to the Santa Clara County Department of Correction for the purposes of the injunctive terms of this Agreement only, and shall have no effect on class members' individual claims for damages, except for the named plaintiffs ANTHONY PADILLA, CRISS BROWN, JILL BROWN, and BRUCE LAMBERT.

P. **Qualified Interpreter.** "Qualified interpreter" means an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Injunctive Terms of the Settlement

**VI. FACE-TO-FACE AND GROUP COMMUNICATION**

**A. QUALIFIED INTERPRETERS**

1. While it is understood that the commitment to provide qualified interpreters will not apply to every encounter with staff, the DOC shall adopt and implement written policies and procedures to offer and to provide upon request qualified interpreters for deaf or hard-of-hearing inmates at the Santa Clara County Department of Correction facilities for all complex, confidential or important communication such as interviews for booking into DOC facilities, medical appointments and evaluations, Classification Unit interviews, disciplinary interviews and hearings, and Programs Unit and Pretrial Services booking interviews. Where a qualified interpreter is required under this Agreement, the DOC shall make a good faith effort to provide a qualified interpreter for scheduled appointments or in other circumstances within one hour of being requested. Isolated instances of delay beyond an hour are not considered a violation of this Agreement. Defense counsel and plaintiffs counsel shall meet and confer within 90 days of the effective date of this Agreement regarding the implementation of this section.

2. The defendants have entered into contracts (see Exhibits C), and shall continue these or similar contracts for the provision of services by qualified interpreters to be provided within one hour of the contractor being called.

3. Where a qualified interpreter is required under this Agreement, the parties recognize that the provision of interpreting services may be subject to delay when an interpreter cannot be found in a timely manner despite a reasonable good faith search. It is understood that the commitment to provide an interpreter shall not mean that communication shall be delayed in the booking and inventory process, the medical evaluation process, situations raising security concerns, or other circumstances where appropriate. In all such circumstances, the DOC may use DOC custodial staff to communicate pending the arrival of an interpreter.

4. Where a qualified interpreter is required under this Agreement, and where a staff member is used to interpret prior to the arrival of a qualified interpreter, upon the arrival of the qualified interpreter at the DOC, a staff member shall, with the aid of the qualified interpreter, review and confirm with the inmate the prior communications.

5. The DOC shall adopt and implement written policies and procedures stating that the DOC shall not rely on DOC staff members or other employees who may have some ability to communicate using sign language to interpret in complicated, confidential or important communications with deaf or hard-of-hearing inmates, except in the event of an emergency, e.g., to assist in communicating with an apparently suicidal inmate while waiting for a qualified interpreter to arrive.

6. The parties shall meet and confer within 90 days of the Effective Date of this Agreement concerning the implementation of this section.

8           **B. ASSISTIVE LISTENING DEVICES AND  
9            COMPUTER ASSISTED TRANSCRIPTION**

10          1. The DOC shall adopt and implement written policies and procedures to provide ALD and  
11         CARTT services whenever appropriate for a deaf or hard-of-hearing inmate at the Santa Clara County Department  
12         of Correction facilities to ensure effective and equivalent communication by and with the inmate in any and all  
13         programs or services of the DOC for which the inmate is qualified.

14  
16          2. The DOC has purchased an ALD system and shall continue to maintain this equipment in  
17         working order.

18          3. The DOC has identified local providers of CARTT services and shall continue to maintain a list  
19         of CARTT service providers.

20          4. The DOC shall offer to provide a deaf or hard-of-hearing inmate the prompt use of an ALD or  
21         CARTT upon the request by the inmate to provide the inmate with effective and equivalent communication in  
22         programs or services of the DOC for which the inmate is qualified.

24           **C. HEARING AIDS AND BATTERIES**

25          1. Adult Custody Medical Services shall adopt and implement written policies and procedures to  
26         replace batteries for deaf or hard-of-hearing inmates' hearing aids, and repair inmates' hearing aids.

27          2. At the time of the initial intake interview of inmates during the booking process, Adult Custody  
28         Medical Services shall interview deaf and hard-of-hearing inmates to determine the specific type of hearing aid

1 battery they use, and if the inmate can identify the type of battery and/or if it is otherwise apparent, Adult Custody  
2 Medical Services shall purchase and keep such batteries in stock in the medical supplies of the Medical  
3 Department during the length of time these inmates are in the custody of the DOC.

4 3. Replacement hearing aid batteries shall be provided by Adult Custody Medical Services to  
5 inmates requesting them as soon as possible but no later than 24 hours after such request (excluding weekends and  
6 holidays).

7 4. Adult Custody Medical Services shall send inmate hearing aids to a hearing aid repair company  
8 as soon as possible but no later than 24 hours (excluding weekends and holidays) following a request by an inmate  
9 for repair of his or her hearing aid.

10 5. Adult Custody Medical Services shall inform the inmate as soon as possible, but no later than 24  
11 hours (excluding weekends and holidays), when his or her hearing aid was sent for repair by the DOC and when it  
12 is estimated to be returned by the repair company. Adult Custody Medical Services shall provide the inmate with  
13 written documentation of all hearing aid repairs, including detailed information regarding the vendor used, the  
14 date of the repair, and the specific repairs performed.

16 D. WRITING MATERIALS

17 1. The DOC shall adopt and implement written policies and procedures to provide writing  
18 materials, including paper and pencil, during the booking process at the DOC to deaf or hard-of-hearing inmates.

19 2. The DOC shall adopt and implement written policies and procedures that DOC staff and  
20 employees having contact with inmates shall utilize writing materials to communicate with a deaf or hard-of-  
21 hearing inmate if requested to do so by the inmate.

22 3. Unless detrimental to the safety of the inmate or the institution, a deaf or hard-of-hearing inmate  
23 shall be permitted to keep such writing materials in his or her possession after the booking process and until such  
24 materials are replaced either by purchase through the DOC Commissary or provision of an "Indigent Package"  
25 should the inmate be unable to purchase such writing materials. If writing materials are removed from a deaf or  
26 hard-of-hearing inmate for safety reasons, those materials shall be restored to the inmate as soon as possible.  
27

1

E. COURT NOTIFICATION

2       1. The DOC shall adopt and implement written policies and procedures to notify the court prior to a  
3 deaf or hard-of-hearing inmate's first arraignment before that court that the inmate is deaf or hard-of-hearing and  
4 requires a qualified interpreter or other auxiliary aid or service to ensure effective communication.

5       VII. TELEPHONE COMMUNICATIONS

6       A. TTY/TDD's

7       1. The DOC shall adopt and implement written policies and procedures to provide TTY/TDD's to  
8 deaf or hard-of-hearing inmates in a manner that ensures equivalent access to telephone services as set forth in this  
9 agreement. These policies and procedures shall also provide that hearing inmates shall have access to TTY/TDD's  
10 to communicate with deaf or hard-of-hearing individuals.

11       2. The DOC shall enter into a contract to provide and install six permanent TTY/TDD units  
12 (Exhibit D), within 90 days of execution of this Agreement in the following locations:

- 14           a. Main Jail North, Booking Area;  
15           b. Main Jail North, eighth floor, housing unit "B";  
16           c. Main Jail North, fourth floor, housing unit "C-1";  
17           d. Main Jail North, fifth floor, housing unit "A";  
18           e. Elmwood Men's Facility Minimum Compound; and  
19           f. Correctional Center for Women, housing unit "W4-A".

20       3. Defense counsel and plaintiffs counsel shall meet and confer within 90 days of installation of the  
21 permanent TTY/TDD units referenced in paragraph 2, above, to discuss placement of additional permanent  
22 TTY/TDD units in other areas of the DOC facilities if necessary based on an evaluation of the efficacy, sturdiness  
23 and security of those units. Defense counsel shall notify plaintiffs counsel in writing of the DOC's intentions  
24 regarding additional locations for permanent TTY/TDD units prior to the meet and confer. By mutual agreement,  
25 the parties may extend the trial period and time to meet and confer if there is insufficient information to evaluate  
26 the efficacy of the permanent TTY/TDD units. Should the parties agree not to increase the number of permanent  
27 TTY/TDD units, counsel shall meet and confer regarding amending the policies and procedures as to the

1 permanent TTY/TDD units, and changing the number and location of portable TTY/TDD units to be maintained  
2 by the DOC, as discussed below.

3       4. Unless and until the parties agree otherwise, the DOC shall maintain in working order, at a  
4 minimum, the following number of portable TTY/TDD units in each of its facilities:

- 5           a. Main Jail North and South facilities - four units;  
6           b. Elmwood Men's Facility - two units; and  
7           c. Correctional Center for Women - two units.

8       5. The DOC shall keep and maintain a log of portable TTY/TDD requests for and use by inmates  
9 including the inmate's name, officer's name, date of use, and time of request and use.

10      6. The DOC shall promptly provide portable TTY/TDD units to all deaf and hard-of-hearing  
11 inmates in housing units or areas without permanent TTY/TDD units in working order upon their request, absent  
12 emergency circumstances such as facility lock-down. The DOC shall further offer the use of portable TTY/TDD  
13 units to all such inmates at the beginning of each day shift for calls to be made on the same basis as hearing  
14 inmates' access to telephones, e.g., during the inmates' regularly scheduled time out of their cells.

16      7. The DOC shall ensure that all TTY/TDD units for use by inmates at DOC facilities have  
17 complete access to a relay service, and are fully capable of accessing at a minimum the following "1-800"  
18 telephone numbers of an appropriate telecommunication service:

- 19           a. Relay TTY;  
20           b. Relay Voice; and  
21           c. Operator Services for the Deaf.

22      8. In recognition that telephone calls placed over a TTY/TDD unit take three to five times longer  
23 than telephone calls placed using standard voice telephone equipment, the DOC shall not impose any time limits  
24 on telephone calls made using TTY/TDD units unless there is substantial good cause for placing a reasonable limit  
25 determined on a case-by-case basis. Good cause shall include circumstances such as facility lock down or other  
26 emergency requiring the inmate to return to his or her cell. The DOC shall document any such imposition of a  
27 time limit on the use of a portable TTY/TDD unit and good cause in the TTY/TDD Log Book.

1

B. AMPLIFIED TELEPHONES

2

3 1. The DOC shall adopt and implement written policies and procedures to provide and maintain in  
good working order a minimum of two amplified telephones in each of the DOC visiting facilities where visiting  
4 communication takes place by telephone.

5 2. The DOC shall provide and maintain in working order two amplified telephones which allow the  
6 user to control the level of amplification and provide for effective communication in each of the DOC visiting  
7 facilities as follows:

- 8 a. Main Jail North - two visiting rooms on each floor;  
9 b. Main Jail South - two telephones in both visiting rooms;  
10 c. Elmwood Men's Facility - two telephones in visiting rooms located in housing units M2,  
11 M3, M4, M5 and M8; and  
12 d. Correctional Center for Women - two telephones in visiting rooms located in housing  
13 unit W4.

14 3. The DOC shall adopt and implement written policies and procedures to provide at least one  
15 amplified telephone which allows the user to control the level of amplification and provides effective communication in every housing unit  
16 located in all DOC facilities.

17 C. INCOMING TELEPHONE CALLS

18 1. The DOC shall adopt and implement written policies and procedures to ensure equally effective  
19 telephone access to the DOC by deaf and hard-of-hearing callers who make calls to the DOC through the  
20 California Relay Service or other equivalent relay service by offering to transfer all such calls immediately to a live  
21 operator.

22 2. Deaf or hard-of-hearing individuals calling DOC facilities through a relay service shall be given  
23 notice at the beginning of any recorded message or menu-driven telephone system utilized by the DOC of how to  
24 immediately reach a live operator.

## VIII. ASSESSMENT

### A. IDENTIFICATION BY CLASSIFICATION UNIT

1. The DOC shall adopt and implement written policies and procedures to identify all deaf and hard-of-hearing inmates in DOC facilities. Such information shall be made available to the officers assigned to housing units in which deaf or hard-of-hearing inmates are assigned to live, the Classification Unit of the DOC, and the Adult Custody Medical Services, including the medical and mental health departments at the DOC.

2. Consistent with the DOC's classification procedure, the DOC shall identify all deaf and hard-of-hearing inmates in the DOC's Classification Code Plan, and shall disseminate that information to all appropriate DOC personnel.

### B. ACCESS TO AND ACCOMMODATION IN DOC PROGRAMS

1. The DOC shall adopt and implement written policies and procedures to interview each deaf or hard-of-hearing inmate to determine and document the nature of the inmate's disability and the appropriate auxiliary aid or services required to ensure effective and equivalent participation by the inmate in all DOC programs and services.

2. The DOC shall provide an opportunity for individuals with hearing impairments to request the auxiliary aids of their choice and shall give primary consideration to the choice expressed by the individual. "Primary consideration" means that the DOC shall honor the choice unless it can show that another equally effective means of communication is available, or that the use of the means chosen by the inmate will result in a fundamental alteration in the services, programs, or activity, or in undue financial or administrative burden.

3. Upon intake into DOC facilities, the DOC shall refer deaf and hard-of-hearing inmates to the Programs Unit of the DOC.

4. As soon as possible, but no later than 72 hours (excluding weekends and holidays) after an inmate's entry into DOC facilities, each inmate who is deaf or hard-of-hearing shall be interviewed by the DOC Programs Unit to determine the inmate's eligibility to participate in DOC programs and the accommodations necessary to ensure the inmate's effective and equivalent participation in those programs for which the inmate is eligible. During the interview, the inmate shall be informed of all various auxiliary aids and services available.

1       5. For communication at the Programs Unit interview, the DOC shall offer auxiliary aids and  
2 services, including the services of a qualified sign language interpreter. If the inmate requests the services of an  
3 interpreter, a subsequent interview shall be scheduled, if necessary, to provide the requested services.

4       6. Within 90 days of the effective date of this Agreement, defense counsel shall provide plaintiffs  
5 counsel with the DOC's proposed procedure regarding implementation of this Section, and the parties shall meet  
6 and confer regarding that proposal.

7           **IX. NOTICE OF RIGHTS**

8       1. The DOC shall adopt and implement written policies and procedures to provide notice to all deaf  
9 and hard-of-hearing inmates of their rights at DOC facilities to auxiliary aids and services necessary to ensure  
10 effective communication, including but not limited to the right to interpreters, and the right to place telephone calls  
11 using a TTY/TDD.

12       2. The DOC shall provide notification to deaf and hard-of-hearing inmates as follows:

- 13           a. Written permanent and conspicuous notice in the Intake Area of the Main Jail, and in  
14 each housing area with special services (Exhibit E);  
15  
16           b. Booking Video (Exhibit F);  
17  
18           c. Inmate Handbook insert (Exhibit G); and  
19  
20           d. Orientation Video (Exhibit H).

21       3. The DOC shall caption the existing Orientation Video within 60 days of the effective date of this  
22 Agreement. The DOC shall further include both captioning and a sign language window in all video tapes  
23 developed by the DOC for inmate use in the future.

24           **X. SAFETY**

25           **A. VISUAL ALARMS**

26       1. The DOC shall obtain cost estimates for the installation of visual alarms in the minimum camp  
27 area at Elmwood (including the chow hall, chapel, housing areas, and food service work area), the minimum  
28 housing area at CCW, and all areas where visitors have free egress. The parties shall meet and confer within 90  
days of execution of this Agreement regarding whether the DOC will adopt and implement written policies and  
procedures to install and maintain in working order visual alarms in these areas of the DOC facilities. Defense

1 counsel shall notify plaintiffs counsel in writing of the DOC's intentions regarding installation of visual alarms  
2 prior to the meet and confer.

3           **B. EVACUATION**

4       1. The DOC shall adopt and implement written policies and procedures to ensure the safe  
5 evacuation of deaf and hard-of-hearing inmates in the event of an emergency which provide that DOC officers  
6 assigned to housing units in which deaf or hard-of-hearing inmates are assigned shall individually and personally  
7 contact and inform such inmates in the event of an evacuation or other emergency procedure, giving the safety of  
8 such inmates the highest priority and ensuring such inmates are accounted for.  
9

0           **C. IDENTIFICATION WRIST BANDS**

1       1. The DOC shall adopt and implement written policies and procedures to provide specially colored  
2 identifying wristbands to inmates having special needs, including inmates who are deaf or hard-of-hearing.  
3

4       2. The parties understand that the DOC currently provides wrist bands for all inmates, some of  
5 which are currently color-coded to indicate specific information regarding inmates, such as medical information,  
6 security information, and special needs of inmates.  
7

8           **D. ANNOUNCEMENTS AND INFORMATION**

9       1. The DOC shall adopt and implement written policies and procedures to ensure that deaf and  
0 hard-of-hearing inmates receive prompt and effective notice of interviews, appointments, court appearances, meals,  
1 medical assessment and medication times, and other similar announcements and information provided to inmates.  
2

3       2. Effective communication of announcements and information may include, e.g., written notes or  
4 personal contact.  
5

6           **XL      HOUSING**

7           **A. HOUSING AREAS WITH SPECIAL SERVICES**

8       1. The DOC shall adopt and implement written policies and procedures to establish housing areas at  
9 the jail with special services for deaf and hard-of-hearing inmates, ensuring that such units include all security,  
0 medical, and mental health levels classified by the DOC, and include equal access to DOC programs and services.  
1 Such housing areas with special services for deaf and hard-of-hearing inmates are to be an integral part of the  
2 regular housing plan at the DOC, and shall include deaf and hard-of-hearing inmates as well as inmates without  
3

1 disabilities. The sole purpose of the designation is to facilitate ready and equivalent access to auxiliary aids and  
2 services.

3       2. Current housing areas with special services are identified as follows:

- 4           a. Main Jail North, eighth floor, housing unit "A";
- 5           b. Main Jail North, eighth floor, housing unit "B";
- 6           c. Main Jail North, sixth floor, housing unit "A", Assessment and Observation Unit;
- 7           d. Main Jail North, fifth floor, housing units "A" and "B", housing units providing jail  
8 programs;
- 9           e. Main Jail North, fourth floor, housing unit "C-1", maximum security housing unit;
- 10          f. Main Jail North, second floor, "Special Housing" unit housing for inmates requiring  
11 special treatment due to physical disability or medical condition;
- 12          g. Main Jail South, housing unit "244 East", trustee dormitory housing;
- 13          h. Main Jail South, housing unit "245 East", dormitory housing;
- 14          i. Elmwood Men's Facility, housing unit "M2-A", program housing unit;
- 15          j. Elmwood Men's Facility, housing unit "M8", program housing unit;
- 16          k. Elmwood Men's Facility, "Barracks One" housing unit, dormitory housing;
- 17          l. Correctional Center for Women, housing unit "W4-A", maximum security housing unit;  
18 and
- 19          m. Correctional Center for Women, housing units "W1" dorms 1,2 and 3, trustee housing;  
20 W2-A,B,C,D,E, and F, dormitory housing and program units.

21       3. In all housing areas with special services, the DOC shall, at a minimum, provide the following  
22 services:

- 23           a. Either permanent or portable TTY/TDD units as specified above in Section VII.A.;
- 24           b. Amplified telephone equipment as specified above in Section VII.B.;
- 25           c. Visual alarms as specified above in Section X.A.;
- 26           d. Closed captioned televisions or televisions with decoders; and

1                   c. Identification of deaf and hard-of-hearing inmates to officers assigned to housing areas  
2 with special services as specified above in Section XI. A.2.

3                  4. In all housing areas with special services which provide programs, the DOC shall offer and  
4 provide auxiliary aids and services as specified above in Section VIII.B.

5                  5. Deaf and hard-of-hearing inmates shall have equal access to programs, which occasionally may  
6 require reassignment of hearing inmates to other appropriate housing to permit transfer of a deaf or hard-of-  
7 hearing inmate to a housing area with special services where a program is offered.

8                  6. Deaf and hard-of-hearing inmates shall not be forced to live in a housing area with special  
9 services solely because of their disability, but may be assigned to other appropriate housing at the DOC facilities,  
10 subject to classification considerations. In those circumstances, such inmate shall also have substantial access to  
11 those services described above in paragraphs 3 and 4.

13               **XII. TRAINING**

14               1. The DOC shall adopt and implement written policies and procedures to provide training for all  
15 permanent classified DOC employees having contact with deaf or hard-of-hearing inmates and all management or  
16 administration staff regarding all relevant policies and procedures implementing this Agreement.

17               2. The DOC shall adopt and implement a program of employee training on the provision of the  
18 above aids and services to deaf and hard-of-hearing inmates in conjunction with its current programs regarding the  
19 provision of services to individuals with disabilities, to begin such training within 60 days of the Effective Date of  
10 this Agreement and to make such training available in the Academy with refresher courses every two years  
11 thereafter. The DOC shall provide plaintiffs counsel with information regarding the content and duration of such  
12 training, and classification code or identity of instructors. The content of such training shall include a segment on  
13 sensitivity to deafness.

14               **XIII. ENFORCEMENT**

15               1. The DOC shall provide the following information to plaintiffs counsel every four months during  
16 the first year under the terms of this Agreement, beginning 120 days after execution of this Agreement and  
17 semiannually thereafter:

- 1           a. List of all deaf or hard-of-hearing inmates as identified upon booking and dates of  
incarceration;
- 3           b. Any changes in the location of housing areas with special services for deaf and hard-of-  
hearing inmates;
- 5           c. Copies of all grievances submitted by inmates, inmate complaints to Internal Affairs, or  
other written complaints received by the defendants or their counsel from inmates, visitors or callers to the DOC  
regarding discrimination on the basis of hearing impairment. The DOC's Office of Internal Affairs may preserve  
the right to provide such information in accordance with law by redacting names where necessary to maintain the  
confidentiality of communications with Internal Affairs;
- 10          d. Telephone logs for portable TTY/TDD units;
- 12          e. Reports regarding training, including content and nature of training, when the training  
took place, length of training, classification or identity of who conducted the training, approximate total number of  
14 badge staff, total number of badge staff attending the training, approximate total number of non-badge staff, and  
total number of non-badge staff attending the training;
- 16          f. Any changes in contracts for the provision of interpreter services;
- 18          g. Policies and procedures or any amendments of policies and procedures relating to  
implementation of this Agreement;
- 20          h. Reports verifying the date and location for installation, subsequent to the effective date  
of this Agreement, of visual alarms, amplified telephones, TTY/TDD equipment, closed caption televisions or  
22 televisions with decoders, assistive listening devices, and all other equipment provided for the purpose of  
accommodation of a hearing impairment;
- 24          i. Reports verifying the working order of visual alarms, amplified telephones, TTY/TDD  
equipment, closed caption televisions or televisions with decoders, assistive listening devices, and all other  
26 equipment provided for the purpose of accommodation of a hearing impairment;
- 28          j. List of all deaf or hard-of-hearing inmates participating in DOC programs and  
identification of those programs, or at the DOC's option, a list of all deaf and hard-of-hearing inmates in custody  
and a list of all inmates participating in DOC programs during the reporting period;

- 1                   k. Log of use of qualified interpreters;
- 2                   l. Log of use of CARTT and ALD; and
- 3                   m. Log of requests for any repair of hearing aids.
- 4                   2. Plaintiffs counsel, or their designees, shall have the right to conduct three inspection tours of
- 5                   DOC facilities during the first year following the effective date of this Agreement, and two times per year
- 6                   thereafter for the duration of this Agreement, upon 24 hours notice to defense counsel (excluding weekends and
- 7                   holidays). Plaintiffs counsel shall be entitled to inspect any aspect of DOC operations subject to the terms of this
- 8                   Agreement, such as physical plant, equipment, logs and records, subject to reasonable security concerns of the
- 9                   DOC.

10                  Court Approval of Settlement

11                  XIV. Notice and Settlement Hearing. Promptly after execution of this Agreement, the parties shall jointly

12                  apply for entry of an Order granting preliminary approval of the class settlement regarding injunctive relief as set forth

13                  herein, approval of the Notice of the proposed settlement to members of the proposed Settlement Class for publication in a

14                  newspaper of general circulation to be determined by the Court, and posting in specified areas of DOC facilities, and for

15                  conditional certification of the Settlement Class for injunctive relief pursuant to F.R.C.P. 23(b)(2) for settlement purposes

16                  only. The Notice for publication and posting shall be substantially in the form attached hereto as Exhibit A and contain

17                  such other provisions as may be required by the Court. The defendants shall pay the costs of the notice to Settlement

18                  Class members.

19                  XV. Final Approval of Class Settlement. The parties shall request that after notice is given the Court hold a

20                  hearing for Final Approval of the class settlement. Final Approval of the class settlement is defined as the issuance of an

21                  order by the Court that includes at least each and every one of the following:

- 22                  A. A finding that fair, adequate and reasonable notice of the class settlement has been given to
- 23                  the members of the Settlement Class in the manner previously ordered by the Court;
- 24                  B. Certification of the Settlement Class under F.R.C.P. 23(b)(2) for settlement purposes only,
- 25                  including appointment of one or more class representatives, and appointment of class counsel;
- 26                  C. Release of the defendants on the Released Claims; and

1 D. Retention by the U.S. District Court of jurisdiction for the purpose of enforcement of this  
2 Agreement.

3 **Damage Terms of the Settlement for Named Plaintiffs**

4 XVL Defendants shall pay to the representative plaintiffs the total sum of \$72,000 in settlement of their  
5 individual claims against defendants. Such payment shall be made to the Public Interest Law Firm no later than 30 days  
6 following final approval of this Settlement Agreement by the Court.

7 **Attorneys' Fees and Costs**

8 XVII Plaintiffs counsel shall submit an attorney's fee application to the Court. Plaintiffs' application shall not  
9 exceed a request of \$220,000 for fees, disbursements in the amount of \$9,841, and in addition a claim of 25 hours in  
10 connection with the motion for fees. Defendants shall not propose a fee to be paid to plaintiffs of less than \$90,000.  
11 Defendants stipulate to plaintiffs' claim of disbursements in the amount of \$9,841. Defendants stipulate to plaintiffs' claim  
12 of 25 hours in connection with the motion for attorney's fees. Defendants further stipulate that plaintiffs are the prevailing  
13 parties in this litigation. Plaintiffs hereby agree not to make an application for fees in the future with respect to this  
14 litigation, except in connection with enforcement pursuant to Section XXVI of this Agreement. The parties shall not  
15 appeal the Judge's finding and decision on the fee award made to plaintiffs counsel. Payment of attorney's fees and costs  
16 shall be made by defendants to the Public Interest Law Firm no later than 30 days following the Court's order on plaintiffs'  
17 fee application.

18 **Procedure Regarding Meet and Confer Obligations Under Agreement**

19 XVIII Under the terms of this Agreement, the parties have agreed to meet and confer regarding the following  
20 issues: (1) Section VI A.1 - Interpreters; (2) Section VII A.3 - Permanent TTY/TDD's; (3) Section VIII B.6 -  
21 Accommodation in Programs; and (4) - Section X A. - Visual Alarms. If the parties reach agreement with respect to any  
22 or all of these provisions, such agreement shall be made in writing and become part of this Agreement without the need  
23 for further Court approval, and shall thereafter be enforceable term(s) of this Agreement. If the parties are unable to reach  
24 agreement with respect to any or all of these provisions, the matter shall be referred to Chief Magistrate Judge Edward A.  
25 Infante, or his designee, for resolution. The decision (s)of Chief Magistrate Judge Infante, or his designee, shall be made  
26 in writing, final and binding on the parties, and enforceable as term(s) of this Agreement.

Modification and Term of Agreement

XIX. Modification of Agreement. This Agreement may be modified by mutual consent of defense counsel and plaintiffs counsel, upon written request by a party requesting the modification setting forth good cause, which shall include a significant change in the law or a significant change in or discovery of facts, such as a fundamental alteration in the services, programs or activities, or an undue financial or administrative burden. The parties shall meet and confer in good faith within ten court days of the written request for modification, or at an otherwise mutually agreed upon time. Upon consent, a joint motion for modification shall be submitted to the Court for approval. If the parties are unable to reach an agreement as to such requested modification to the Agreement, either party may request a settlement conference before Chief Magistrate Judge Edward A. Infante or his designee on this issue. If the parties are unable to reach an agreement upon completion of the settlement conference, Chief Magistrate Judge Infante or his designee shall certify that an impasse has been reached and the matter shall be referred to the District Court for resolution. The sole issue before the Court in any such proceeding shall be whether there has been such a significant change in law or a significant change in or discovery of facts (such as a fundamental alteration in the services, programs or activities, or an undue financial or administrative burden) justifying the request for modification.

XX. Term of Agreement. The term of this entire Agreement shall be a period of two years from the Effective Date of this Agreement. The term of this Agreement may be extended upon the mutual consent of the parties with approval by the Court. For good cause, such as adjudicated or stipulated violations of the Agreement, or the absence of data necessary to evaluate compliance with the Agreement, either party may move the Court to extend the term of the Agreement for up to one year.

Release and Dismissal

XXI. Dismissal. The terms of this Agreement have been negotiated and agreed upon by the parties with the goal that compliance with the terms of this Agreement would be consistent with Federal and State of California law, including Title II of the Americans with Disabilities Act of 1990 and relevant implementing regulations, Section 504 of the Rehabilitation Act of 1973 and relevant implementing regulations, the California Unruh Civil Rights Act, the California Public Accommodations Law, the Eighth and Fourteenth Amendments to the U.S. Constitution, and Article I, Sections 7 and 17 of the California Constitution. Any and all claims, proceedings and causes of action for damages, penalties, attorneys' fees, interest, costs, declaratory, injunctive or other relief arising out of the transaction or series of

1 transactions that gave rise to this action and not expressly provided for by this Agreement shall be dismissed without  
2 prejudice, and subject to the reservation of jurisdiction by the U.S. District Court to enforce the Agreement.

3       **XXII. General Release and Waiver of Civil Code §1542 As To Claims By Representative Plaintiffs.** The  
4 representative plaintiffs and the defendants, on behalf of themselves, their heirs, estates, executors, administrators, assigns,  
5 servants, employers, agents, representatives, insurers, attorneys, predecessors, and successors, hereby forever mutually  
6 release and fully discharge each other and their servants, partners, employers, affiliates, agents, assigns, representatives,  
7 insurers, attorneys, predecessors, and successors, and their heirs, estates, executors, administrators, assigns, agents,  
8 representatives, insurers, and attorneys, from:  
9

10       a. Any and all claims, actions, judgments, obligations, damages, demands, debts, liabilities, and causes of  
11 action arising from the facts alleged in this litigation, or that relate in any manner to any associated claims for attorney's  
12 fees and costs for legal representation, other than as provided for herein, and excepting claims arising out of enforcement  
13 of this Agreement;

14       b. Any and all claims, demands, debts, and causes of action of whatsoever kind or nature for damages,  
15 whether known or unknown, suspected or unsuspected, matured or unmatured, which they now own or hold against each  
16 other, or have at any time heretofore owned or held against each other arising out of the facts alleged in this litigation;

17       c. With respect to injunctive relief, damages claims of the representative plaintiffs, or claims by  
18 defendants, the parties represent that they are not aware of any claim against each other, other than the claims that are  
19 released by this Agreement. The representative plaintiffs and the defendants mutually waive any and all rights and  
20 benefits conferred by the provisions of Section 1542 of the Civil Code of the State of California. This section provides as  
21 follows:

22       "A general release does not extend to claims which the creditor does not know or suspect to exist in his  
23 favor at the time of executing the release, which if known by him must have materially affected his  
24 settlement with the debtor."

25       The representative plaintiffs understand and acknowledge that, even if they should eventually suffer  
26 damages arising out of the matters herein released, they will not be able to make any claims for those damages.

27       d. This section does not extend to any claim by the County for reimbursement, or any other claim by the  
28 County unrelated to provision of accommodation of disability, or to any claim for monetary damages by any class member  
other than the representative plaintiffs.

1                   e.     The parties do not purport to waive or release any damages claims by any class member other than the  
2 representative plaintiffs.

3                   f.     The parties understand and agree that individual plaintiffs other than the representative plaintiffs shall  
4 be required to prove a violation of the law for payment of damages and that violation of this Agreement shall not  
5 constitute sufficient ground in itself for an award of damages.

6                  **XXIII. No Admissions.** The parties to this Agreement understand and acknowledge that this Agreement  
7 constitutes a compromise and settlement of disputed claims. No action taken by the parties hereto, or any of them, either  
8 previously or in connection with the Agreement, shall be deemed or construed to be:

- 9                  a.     An admission of the truth or falsity of any claims heretofore made;  
10                 b.     An acknowledgment or admission by either party of any particular fault or liability as to the other party.

12                  **XXIV. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the  
13 matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents  
14 of either party, that is not contained in this Agreement, shall be enforceable.

15                  **XXV. Public Information.** This Agreement is a public document. A copy of this document or any  
16 information contained in it may be made available to any person. Plaintiffs counsel and defense counsel shall prepare a  
17 joint press release regarding the settlement of this litigation, and if after meeting and conferring are unable to agree on the  
18 form of such press release, shall submit the matter to Chief Magistrate Judge Edward A. Infante for resolution.

19                  **XXVI Enforcement.** Any alleged violation of this Agreement shall first be addressed in writing to all parties to  
20 this Agreement. Defense counsel and plaintiffs counsel shall meet and confer in good faith to resolve any alleged  
21 violation of this Agreement within seven days of the written notice of violation, or at a time set by mutual agreement. If  
22 the parties are unable to reach an agreement as to the alleged violation of the Agreement, either party may request a  
23 settlement conference before Chief Magistrate Judge Edward A. Infante, or his designee, on this issue. If the parties are  
24 unable to reach an agreement upon completion of the settlement conference, Chief Magistrate Judge Infante shall certify  
25 that an impasse has been reached and the matter shall be referred to the U.S. District Court for resolution. The U.S.  
26 District Court shall retain jurisdiction for a period of two years from the Effective Date of this Agreement, subject to  
27 modification of the term of the Agreement by the parties under Section XIX, above. For the purposes of any action to  
28 enforce this Agreement, defendants agree that all jurisdictional requirements of law, including the Prison Litigation

1 Reform Act (PLRA), have been complied with or waived, and hereby expressly waive any right they otherwise might have  
2 to contest federal jurisdiction under the terms of the PLRA. Should the U.S. District Court be found not to have  
3 jurisdiction over the enforcement of this Agreement, it shall remain enforceable in California Superior Court, and the  
4 parties hereby agree to submit to the jurisdiction of the California State Courts in and for the County of Santa Clara for the  
5 enforcement of the provisions of this Agreement. The parties shall be entitled to seek to recover attorney's fees and costs  
6 associated with any action to enforce the terms of this Agreement. The parties agree that damages alone is an inadequate  
7 remedy from defendants' failure to comply with their obligations under this Agreement, and that the Court may issue  
8 injunctive relief to enforce this Agreement.

9

10 IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this  
11 Agreement.

12 Dated: Jan. 14, 1999

13 Amanda K. Wilson  
14 Michelle L. Cheng  
PUBLIC INTEREST LAW FIRM

15 Linda D. Kilb  
16 Arlene B. Mayerson  
DISABILITY RIGHTS EDUCATION &  
17 DEFENSE FUND, INC.

18 J. Kendrick Kresse  
CALIFORNIA CENTER FOR LAW &  
THE DEAF, INC.

19 John W. Fowler  
20 Susan K. Hoerger  
Katharine L. West  
21 McCUTCHEON, DOYLE, BROWN  
& ENERSEN, LLP

22 By: Amanda K. Wilson  
23 Attorneys for Plaintiffs

24 Dated: 1-15-99, 1999

25 Ann Miller Ravel, County Counsel  
26 Todd A. Boley, Deputy County Counsel  
Rima H. Singh, Deputy County Counsel  
27 SANTA CLARA COUNTY  
OFFICE OF COUNTY COUNSEL

28 By: C. S. Boley  
Attorneys for Defendants

SETTLEMENT AGREEMENT  
Case No. C-98-20309-RMW-EAI





sent to  
N. Fowler  
4-23-93

1 Amanda K. Wilson #148401  
2 Patricia G. Price #135450  
2 PUBLIC INTEREST LAW FIRM  
3 111 West Saint John Street, Suite 315  
3 San Jose, California 95113  
4 (408) 293-4790

5 Randolph J. Rice #83712  
6 Beth Hamilton #87801  
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7 San Jose, California 95113  
7 (408) 947-4000

8  
9 Attorneys for Plaintiff  
10 JERRY SALAZAR

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 JERRY SALAZAR,

14 Plaintiff.

15 v.

16 QUASIM INHAM, Director of  
17 the Santa Clara County Department  
18 of Correction, ROD DIRIDON, RON  
19 GONZALES, MICHAEL HONDA, ZOE  
LOFGREN, and DIANE McKENNA in  
their official capacities as Supervisors  
of Santa Clara County.

20 Defendants.

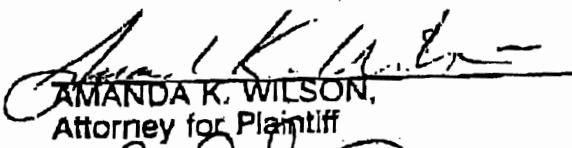
Case No. 192-20790-RM

[PROPOSED]

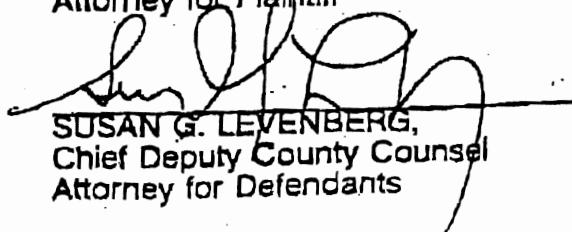
ORDER, MEMORANDUM OF  
UNDERSTANDING, AND STIPULATION

21 Attached hereto is a proposed Order, Memorandum of Understanding, or  
22 Stipulation.  
23

24 Dated: 2/3/93

  
AMANDA K. WILSON,  
Attorney for Plaintiff

25 Dated: 2/3/93

  
SUSAN G. LEVENBERG,  
Chief Deputy County Counsel  
Attorney for Defendants



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7

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8

JERRY SALAZAR,

9

Plaintiff,

10

v.

11

12 QUASLIM INHAM, Director of  
13 the Santa Clara County Department  
14 of Correction, ROD DIRIDON, RON  
15 GONZALES, MICHAEL HONDA, ZOE  
16 LOFGREN, and DIANE McKENNA in  
17 their official capacities as Supervisors  
of Santa Clara County.

18

Defendants.

19

Case No.

20 ORDER, MEMORANDUM OF  
UNDERSTANDING, AND STIPULATION

21

The parties, through their respective counsel, have met and conferred and hereby enter into this Memorandum of Understanding and Stipulation, subject to the Court's approval, to address the following issues raised in this case:

22

The parties agree and stipulate to the following:

23

1. It is the intent of the Department of Correction to continue to house Plaintiff in the sheltered living housing unit on the second floor of the Main Jail, next to the Medical Unit. Plaintiff shall be allowed use of a wheelchair in his cell while housed on the second floor of the Main Jail. However, in the event that the Director of the Department of Correction or his authorized representatives have cause to believe that a threat to the security of the facility, or to plaintiff or any other person within the Jail, would occur if any of the provisions of this Stipulation were followed, the Director or his authorized



1 representatives may suspend the provisions of this Stipulation as follows:

2           A. Counsel for plaintiffs shall be notified in writing by County Counsel  
3 the first business day after the suspension concerning the reasons for the suspension  
4           B. Counsel for defendants shall cooperate with counsel for plaintiff  
5 obtaining an early court date for hearing should counsel for plaintiff deem court action  
6 necessary.

7           2. Defendants shall modify the exercise yard of the second floor of the Jail by  
8 adding the stationary exercise equipment as set forth in Exhibit 1.

9           3. Defendants shall replace the door to plaintiff's cell with a door which meets  
10 the specifications set forth in Exhibit 2.

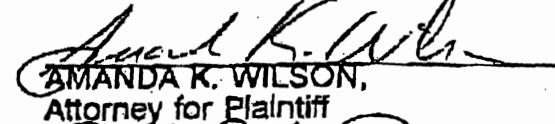
11          4. Plaintiff shall have access to the shower equipped for disabled persons  
12 the second floor of the Jail during reasonable hours pursuant to a schedule set by  
13 defendants.

14          5. This Court shall retain jurisdiction to enforce the terms of this Stipulation  
15 including any action brought pursuant to paragraph 1. above.

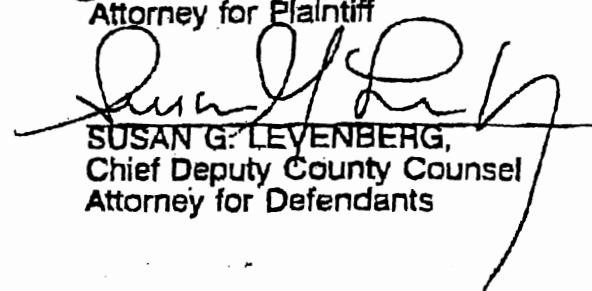
16          6. Each party shall bear its own costs, including attorney's fees.

17          7. Upon completion of paragraphs 2 and 3 above, plaintiffs agree to discontinue  
18 this litigation.

19          Dated: 2/3/93

  
AMANDA K. WILSON,  
Attorney for Plaintiff

20          Dated: 2/3/93

  
SUSAN G. LEVENBERG,  
Chief Deputy County Counsel  
Attorney for Defendants

21          IT IS SO ORDERED.

22          Dated: \_\_\_\_\_

RONALD M. WHYTE  
United States District Court Judge  
Northern District of California









## Title II Highlights

Who is covered by title II of the ADA

- II. Overview of Requirements
- III. "Qualified Individual with a Disability"
- IV. Program Access
- V. Integrated Programs
- VI. Communications
- VII. New Construction and Alterations
- VIII. Enforcement
- IX. Complaints
- X. Designated Agencies
- XI. Technical Assistance

## **I. Who is Covered by Title II of the ADA**

- ↗ The title II regulation covers “public entities.”
- ↗ “Public entities” include any State or local government and any of its departments, agencies, or other instrumentalities.
- ↗ All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment.
  - Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of State and local governments whether or not they receive Federal funds.
- ↗ Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors’ offices, amusement parks, and bowling alleys, are not covered by title II but are covered by title III of the ADA and the Department’s regulation implementing title III.
- ↗ Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation.
  - DOT’s regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

## **II. Overview of Requirements**

- ↗ State and local governments --
  - May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.
    - For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.
  - Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
  - Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless “necessary” for the provisions of the service, program or activity.
    - Requirements that tend to screen out individuals with disabilities, such as requiring a driver’s license as the only acceptable means of identification, are also prohibited.

- Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
- Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.
  - For example, a city office building would be required to make an exception to a rule prohibiting animals in public areas in order to admit guide dogs and other service animals assisting individuals with disabilities.
- Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- May provide special benefits, beyond those required by the regulation, to individuals with disabilities.
- May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.
- Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

### **III. "Qualified Individuals with Disabilities"**

- ↗ Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."
- ↗ An "individual with a disability" is a person who --
  - Has a physical or mental impairment that substantially limits a "major life activity," or
  - Has a record of such an impairment, or
  - Is regarded as having such an impairment.
- ↗ Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

- ↗ “Major life activities” include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- ↗ Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.
- ↗ “Qualified” individuals.
  - A “qualified” individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.
  - The “essential eligibility requirements” will depend on the type of service or activity involved.
    - For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be “essential.”
    - For other activities, such as where the public entity provides information to anyone who requests it, the “essential eligibility requirements” would be minimal.

#### **IV. Program Access**

- ↗ State and local governments--
  - Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.
  - Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.
  - Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as --
    - Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.
    - Providing an aide or personal assistant to enable an individual with a disability to obtain the service.
    - Providing benefits or services at an individual’s home, or at an alternative accessible site.
  - May not carry an individual with a disability as a method of providing program access, except in “manifestly exceptional” circumstances.

- Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

## V. Integrated Programs

- ↗ Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.
- ↗ Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.
- ↗ Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.
  - For example, it would not be a violation for a city to offer recreational programs specially designed for children with mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.
- ↗ State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

## VI. Communications

- ↗ State and local governments must ensure effective communication with individuals with disabilities.
- ↗ Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.
  - “Auxiliary aids” include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD’s), videotext displays, readers, taped texts, Brailled materials, and large print materials.
  - A public entity may not charge an individual with a disability for the use of an auxiliary aid.
- ↗ Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.









## COMMONLY ASKED QUESTIONS ABOUT THE AMERICANS WITH DISABILITIES ACT AND LAW ENFORCEMENT

### **I. Introduction**

Police officers, sheriff's deputies, and other law enforcement personnel have always interacted with persons with disabilities and, for many officers and deputies, the Americans with Disabilities Act (ADA) may mean few changes in the way they respond to the public. To respond to questions that may arise, this document offers common sense suggestions to assist law enforcement agencies in complying with the ADA. The examples presented are drawn from real-life situations as described by police officers or encountered by the Department of Justice in its enforcement of the ADA.

#### **1. Q: What is the ADA?**

**A:** The Americans with Disabilities Act (ADA) is a Federal civil rights law. It gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in State and local government services, public accommodations, employment, transportation, and telecommunications.

#### **2. Q: How does the ADA affect my law enforcement duties?**

**A:** Title II of the ADA prohibits discrimination against people with disabilities in State and local governments' services, programs, and employment. Law enforcement agencies are covered because they are programs of State or local governments, regardless of whether they receive Federal grants or other Federal funds. The ADA affects virtually everything that officers and deputies do, for example:

- receiving citizen complaints;
- interrogating witnesses;
- arresting, booking, and holding suspects;
- operating telephone ("911") emergency centers;
- providing emergency medical services;
- enforcing laws;
- and other duties.

**3. Q: Who does the ADA protect?**

**A:** The ADA covers a wide range of individuals with disabilities. An individual is considered to have a “disability” if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Major life activities include such things as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. To be substantially limited means that such activities are restricted in the manner, condition, or duration in which they are performed in comparison with most people.

- The ADA also protects people who are discriminated against because of their association with a person with a disability.

**Example:** Police receive a call from a woman who complains that someone has broken into her residence. The police department keeps a list of dwellings where people with AIDS are known to reside. The woman’s residence is on the list because her son has AIDS. Police fail to respond to her call, because they fear catching the HIV virus. The officers have discriminated against the woman on the basis of her association with an individual who has AIDS.

**4. Q: What about someone who uses illegal drugs?**

**A:** Nothing in the ADA prevents officers and deputies from enforcing criminal laws relating to an individual’s current use or possession of illegal drugs.

**II. Interacting with People with Disabilities**

**5. Q: What are some common problems that people with disabilities have with law enforcement?**

**A:** Unexpected actions taken by some individuals with disabilities may be misconstrued by officers or deputies as suspicious or illegal activity or uncooperative behavior.

**Example:** An officer approaches a vehicle and asks the driver to step out of the car. The driver, who has a mobility disability, reaches behind the seat to retrieve her assistive device for walking. This appears suspicious to the officer.

- Individuals who are deaf or hard of hearing, or who have speech disabilities or mental retardation, or who are blind or visually impaired may not recognize or be able to respond to police directions. These individuals may erroneously be perceived as uncooperative.

**Example:** An officer yells "freeze" to an individual who is running from an area in which a crime has been reported. The individual, who is deaf, cannot hear the officer and continues to run. The officer mistakenly believes that the individual is fleeing from the scene. Similarly, ordering a suspect who is visually impaired to get over "there" is likely to lead to confusion and misunderstanding, because the suspect may have no idea where the officer is pointing.

- Some people with disabilities may have a staggering gait or slurred speech related to their disabilities or the medications they take. These characteristics, which can be associated with neurological disabilities, mental/emotional disturbance, or hypoglycemia, may be misperceived as intoxication.

**Example:** An officer observes a vehicle with one working headlight and pulls the vehicle over. When the driver hands the registration to the officer, the officer notices that the driver's hand is trembling and her speech is slurred. The officer concludes that the individual is under the influence of alcohol, when in fact the symptoms are caused by a neurological disability.

**Example:** A call comes in from a local restaurant that a customer is causing a disturbance. When the responding officer arrives at the scene, she discovers a 25-year-old man swaying on his feet and grimacing. He has pulled the table cloth from the table. The officer believes that the man has had too much to drink and is behaving aggressively, when in fact he is having a seizure.

*What can be done to avoid these situations? --*

Training, sensitivity, and awareness will help to ensure equitable treatment of individuals with disabilities as well as effective law enforcement. For example:

- When approaching a car with visible signs that a person with a disability may be driving (such as a designated license plate or a hand control), the police officer should be aware that the driver may reach for a mobility device.
- Using hand signals, or calling to people in a crowd to signal for a person to stop, may be effective ways for an officer to get the attention of a deaf individual.
- When speaking, enunciate clearly and slowly to ensure that the individual understands what is being said.
- Finally, typical tests for intoxication, such as walking a straight line, will be ineffective for individuals whose disabilities cause unsteady gait. Other tests, like breathalyzers, will provide more accurate results and reduce the possibility of false arrest.

6. Q: **What if someone is demonstrating threatening behavior because of his or her disability?**

A: Police officers may, of course, respond appropriately to real threats to health or safety, even if an individual's actions are a result of her or his disability. But it is important that police officers are trained to distinguish behaviors that pose a real risk from behaviors that do not, and to recognize when an individual, such as someone who is having a seizure or exhibiting signs of psychotic crisis, needs medical attention. It is also important that behaviors resulting from a disability not be criminalized where no crime has been committed. Avoid these scenarios:

- A store owner calls to report that an apparently homeless person has been in front of the store for an hour, and customers are complaining that he appears to be talking to himself. The individual, who has mental illness, is violating no loitering or panhandling laws. Officers arriving on the scene arrest him even though he is violating no laws.
- Police receive a call in the middle of the night about a teenager with mental illness who is beyond the control of her parents. All attempts to get services for the teenager at that hour fail, so the responding officer arrests her until he can get her into treatment. She ends up with a record, even though she committed no offense.

7. Q: **What procedures should law enforcement officers follow to arrest and transport a person who uses a wheelchair?**

A: Standard transport practices may be dangerous for many people with mobility disabilities. Officers should use caution not to harm an individual or damage his or her wheelchair. The best approach is to ask the person what type of transportation he or she can use, and how to lift or assist him or her in transferring into and out of the vehicle.

**Example:** An individual with a disability is removed from his wheelchair and placed on a bench in a paddy wagon. He is precariously strapped to the bench with his own belt. When the vehicle begins to move, he falls off of the bench and is thrown to the floor of the vehicle where he remains until arriving at the station.

- Some individuals who use assistive devices like crutches, braces, or even manual wheelchairs might be safely transported in patrol cars.
- Safe transport of other individuals who use manual or power wheelchairs might require departments to make minor modifications to existing cars or vans, or to use lift-equipped vans or buses. Police departments may consider other community resources, e.g., accessible taxi services.

) 8. Q: What steps should officers follow to communicate effectively with an individual who is blind or visually impaired?

A: It is important for officers to identify themselves and to state clearly and completely any directions or instructions -- including any information that is posted visually. Officers must read out loud in full any documents that a person who is blind or visually impaired needs to sign. Before taking photos or fingerprints, it is a good idea to describe the procedures in advance so that the individual will know what to expect.

) 9. Q: Do police personnel need to take special precautions when providing emergency medical services to someone who has HIV or AIDS?

A: Persons with HIV or AIDS should be treated just like any other person requiring medical attention. In fact, emergency medical service providers are required routinely to treat all persons as if they are infectious for HIV, Hepatitis B, or other bloodborne pathogens, by practicing universal precautions. Many people do not know that they are infected with a bloodborne pathogen, and there are special privacy considerations that may cause those who know they are infected not to disclose their infectious status.

- Universal precautions for emergency service providers include the wearing of gloves, a mask, and protective eyewear, and, where appropriate, the proper disinfection or disposal of contaminated medical equipment. Protective barriers like gloves should be used whenever service providers are exposed to blood.

**Example:** Police are called to a shopping mall to assist a teenager who has cut his hand and is bleeding profusely. As long as the attending officers wear protective gloves, they will not be at risk of acquiring HIV, Hepatitis B, or any other bloodborne pathogen, while treating the teenager.

- Refusing to provide medical assistance to a person because he or she has, or is suspected of having, HIV or AIDS is discrimination.

**Example:** Police are called to a shopping mall, where an individual is lying on the ground with chest pains. The responding officer asks the individual whether she is currently taking any medications. She responds that she is taking AZT, a medication commonly prescribed for individuals who are HIV-positive or have AIDS. The officer announces to his colleagues that the individual has AIDS and refuses to provide care. This refusal violates the ADA.

### **III. Effective Communication**

**10. Q: Do police departments have to arrange for a sign language interpreter every time an officer interacts with a person who is deaf?**

**A:** No. Police officers are required by the ADA to ensure effective communication with individuals who are deaf or hard of hearing. Whether a qualified sign language interpreter or other communication aid is required will depend on the nature of the communication and the needs of the requesting individual. For example, some people who are deaf do not use sign language for communication and may need to use a different communication aid or rely on lipreading. In one-on-one communication with an individual who lipreads, an officer should face the individual directly, and should ensure that the communication takes place in a well-lighted area.

- Examples of other communication aids, called “auxiliary aids and services” in the ADA, that assist people who are deaf or hard of hearing include the exchange of written notes, telecommunications devices for the deaf (TDD’s) (also called text telephones (TT’s) or teletypewriters (TTY’s)), telephone handset amplifiers, assistive listening systems, and videotext displays.
- The ADA requires that the expressed choice of the individual with the disability, who is in the best position to know her or his needs, should be given primary consideration in determining which communication aid to provide. The ultimate decision is made by the police department. The department should honor the individual’s choice unless it can demonstrate that another effective method of communication exists.
- Police officers should generally not rely on family members, who are frequently emotionally involved, to provide sign language interpreting.

**Example:** A deaf mother calls police to report a crime in which her hearing child was abused by the child’s father. Because it is not in the best interests of the mother or the child for the child to hear all of the details of a very sensitive, emotional situation, the mother specifically requests that the police officers procure a qualified sign language interpreter to facilitate taking the report. Officers ignore her request and do not secure the services of an interpreter. They instead communicate with the hearing child, who then signs to the mother. The police department in this example has violated the ADA because it ignored the mother’s request and inappropriately relied on a family member to interpret.

- In some limited circumstances a family member may be relied upon to interpret.

**Example:** A family member may interpret in an emergency, when the safety or welfare of the public or the person with the disability is of paramount importance. For example, emergency personnel responding to a car accident may need to rely on a family member to interpret in order to evaluate the physical condition of an individual who is deaf.

Likewise, it may be appropriate to rely on a family member to interpret when a deaf individual has been robbed and an officer in hot pursuit needs information about the suspect.

**Example:** A family member may interpret for the sake of convenience in circumstances where an interpreter is not required by the ADA, such as in situations where exchanging written notes would be effective. For example, it would be appropriate to rely on a passenger who is a family member to interpret when an individual who is deaf is asking an officer for traffic directions, or is stopped for a traffic violation.

**11. Q: If the person uses sign language, what kinds of communication will require an interpreter?**

- A: The length, importance, or complexity of the communication will help determine whether an interpreter is necessary for effective communication.
- In a simple encounter, such as checking a driver's license or giving street directions, a notepad and pencil normally will be sufficient.
  - During interrogations and arrests, a sign language interpreter will often be necessary to effectively communicate with an individual who uses sign language.
  - If the legality of a conversation will be questioned in court, such as where Miranda warnings are issued, a sign language interpreter may be necessary. Police officers should be careful about miscommunication in the absence of a qualified interpreter -- a nod of the head may be an attempt to appear cooperative in the midst of misunderstanding, rather than consent or a confession of wrongdoing.
  - In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.

**Example:** An officer clocks a car on the highway driving 15 miles above the speed limit. The driver, who is deaf, is pulled over and issued a noncriminal citation. The individual is able to understand the reasons for the citation, because the officer exchanges written notes with the individual and points to information on the citation. In this case, a sign language interpreter is not needed.

**Example:** An officer responds to an aggravated battery call and upon arriving at the scene observes a bleeding victim and an individual holding a weapon. Eyewitnesses observed the individual strike the victim. The individual with the weapon is deaf, but the officer has probable cause to make a felony arrest without an interrogation. In this case, an interpreter is not necessary to carry out the arrest.

**12. Q: Do I have to take a sign language interpreter to a call about a violent crime in progress or a similar urgent situation involving a person who is deaf?**

A: No. An officer's immediate priority is to stabilize the situation. If the person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later at the booking station.

**13. Q: When a sign language interpreter is needed, where do I find one?**

A: Your department should have one or more interpreters available on call. This is generally accomplished through a contract with a sign language interpreter service. Communicating through sign language will not be effective unless the interpreter is familiar with the vocabulary and terminology of law enforcement, so your department should ensure that the interpreters it uses are familiar with law enforcement terms.

**14. Q: Is there any legal limit to how much my department must spend on communication aids like interpreters?**

A: Yes. Your department is not required to take any step that would impose undue financial and administrative burdens. The “undue burden” standard is a high one. For example, whether an action would be an undue financial burden is determined by considering all of the resources available to the department. If providing a particular auxiliary aid or service would impose an undue burden, the department must seek alternatives that ensure effective communication to the maximum extent feasible.

**15. Q: When would an officer use an assistive listening device as a communication aid?**

A: Assistive listening systems and devices receive and amplify sound and are used for communicating in a group setting with individuals who are hard of hearing.

- At headquarters or a precinct building, if two or more officers are interrogating a witness who is hard of hearing, or in meetings that include an individual who is hard of hearing, an assistive listening device may be needed.

**16. Q: What is a TDD and does every police station have to have one?**

A: A telecommunications device for the deaf (TDD) is a device used by individuals with hearing or speech disabilities to communicate on the telephone. A TDD is a keyboard with a display for receiving typed text that can be attached to a telephone. The TDD user types a message that is received by another TDD at the other end of the line.

- Arrestees who are deaf or hard of hearing, or who have speech disabilities, may require a TDD for making outgoing calls. TDD's must be available to inmates with disabilities under the same terms and conditions as telephone privileges are offered to all inmates, and information indicating the availability of the TDD should be provided.

- )
- TDD's typically cost \$200-300 each and can be used with a standard telephone. It is unlikely that the cost of purchasing a TDD will be prohibitive. Still, a small department with limited resources could arrange to share a TDD with a local courthouse or other entity, so long as the TDD is immediately available as needed.

**17. Q. What about "911" calls? How are those made accessible to people with speech or hearing disabilities?**

A: Individuals with hearing and speech disabilities must have direct access to "911" or similar emergency telephone services, meaning that emergency response centers must be equipped to receive calls from TDD and computer modem users without relying on third parties or state relay services. It is important that operators are trained to use the TDD when the caller is silent, and not only when the operator recognizes the tones of a TDD at the other end of the line. For additional information, please refer to the Department of Justice's publication, *Commonly Asked Questions Regarding Telephone Emergency Services*. For information about how to obtain this and other publications, see the resources section at the end of this document.

**18. Q: Procedures at my office require citizens to fill out forms when reporting crimes. What if the person has a vision disability, a learning disability, mental retardation or some other disability that may prevent the person from filling out a form?**

- )
- A: The simplest solution is to have an officer or clerk assist the person in reading and filling out the form. Police officers have probably been doing this for years. The form itself could also be provided in an alternative format. Providing a copy of the form in large print (which is usually as simple as using a copy machine or computer to increase type size) will make the form accessible to many individuals with moderate vision disabilities.

**IV. Architectural Access**

**19. Q: Does the ADA require all police stations to be accessible to people with disabilities?**

A: No. Individuals with disabilities must have equal access to law enforcement services, but the ADA is flexible in how to achieve that goal. The ADA requires programs to be accessible to individuals with disabilities, not necessarily each and every facility. Often, structural alterations to an existing police station or sheriff's office will be necessary to create effective access. In some situations, however, it may be as effective to use alternative methods, such as relocating a service to an accessible building, or providing an officer who goes directly to the individual with the disability. Whatever approach to achieving "program access" is taken, training of officers and deputies, well-developed policies, and clear public notice of the approach will be critical to ensuring successful ADA compliance.

**Example:** A police station in a small town is inaccessible to individuals with mobility disabilities. The department decides that it cannot alter all areas of the station because of insufficient funds. It decides to alter the lobby and restrooms so that the areas the public uses -- for filling out crime reports, obtaining copies of investigative reports for insurance purposes, or seeking referrals to shelter care -- are accessible. Arrangements are made to conduct victim and witness interviews with individuals with disabilities in a private conference room in the local library or other government building, and to use a neighboring department's accessible lock-up for detaining suspects with disabilities. These measures are consistent with the ADA's program accessibility requirements.

**Example:** An individual who uses a wheelchair calls to report a crime, and is told that the police station is inaccessible, but that the police department has a policy whereby a police officer will meet individuals with disabilities in the parking lot. The individual arrives at the parking lot, waits there for three hours, becomes frustrated, and leaves. By neglecting to adequately train officers about its policy, the police department has failed in its obligation to provide equal access to police services, and has lost valuable information necessary for effective law enforcement.

**20. Q: What about holding cells and jails that are not accessible?**

- A: An arrestee with a mobility disability must have access to the toilet facilities and other amenities provided at the lock-up or jail. A law enforcement agency must make structural changes, if necessary, or arrange to use a nearby accessible facility.
- Structural changes can be undertaken in a manner that ensures officer safety and general security. For example, grab bars in accessible restrooms can be secured so that they are not removable.
  - If meeting and/or interrogation rooms are provided, those areas should also be accessible for use by arrestees, family members, or legal counsel who have mobility disabilities.

**21. Q: Is there a limit to the amount of money my agency must spend to alter an existing police facility?**

- A: Yes. It is the same legal standard of "undue burden" discussed earlier with regard to the provision of communication aids. Your agency is not required to undertake alterations that would impose undue financial and administrative burdens. If an alteration would impose an "undue burden," the agency must choose an alternative that ensures access to its programs and services.

**22. Q: We are building a new prison. Do we need to make it accessible?**

- A: Yes. All new buildings must be made fully accessible to, and usable by, individuals with disabilities. The ADA provides architectural standards that specify what must be done to create access.

- Either the Uniform Federal Accessibility Standards (“UFAS”) or the ADA Standards for Accessible Design (without the elevator exemption) (“ADA Standards”) may be used. UFAS has specific scoping requirements for prisons that require, among other things, that 5% of all cells be made accessible to individuals with mobility disabilities.
- Unlike modifications of existing facilities, there is no undue burden limitation for new construction.
- In addition, if an agency alters an existing facility for any reason -- including reasons unrelated to accessibility -- the altered areas must be made accessible to individuals with disabilities.

## V. Modifications of Policies, Practices, and Procedures

### 23. Q: What types of modifications in law enforcement policies, practices, and procedures does the ADA require?

A: The ADA requires law enforcement agencies to make reasonable modifications in their policies, practices, and procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved. There are many ways in which a police or sheriff’s department might need to modify its normal practices to accommodate a person with a disability.

**Example:** A department modifies a rule that prisoners or detainees are not permitted to have food in their cells except at scheduled intervals, in order to accommodate an individual with diabetes who uses medication and needs access to carbohydrates or sugar to keep blood sugar at an appropriate level.

**Example:** A department modifies its enforcement of a law requiring a license to use motorized vehicles on the streets, in order to accommodate individuals who use scooters or motorized wheelchairs. Such individuals are pedestrians, but may need to use streets where curb cuts are unavailable.

**Example:** A department modifies its regular practice of handcuffing arrestees behind their backs, and instead handcuffs deaf individuals in front in order for the person to sign or write notes.

**Example:** A department modifies its practice of confiscating medications for the period of confinement, in order to permit inmates who have disabilities that require self-medication, such as cardiac conditions or epilepsy, to self-administer medications that do not have abuse potential.

**Example:** A department modifies the procedures for giving Miranda warnings when arresting an individual who has mental retardation. Law enforcement personnel use simple words and ask the individual to repeat each phrase of the warnings in her or his own words. The personnel also check for understanding, by asking the individual such questions as what a lawyer is and how a lawyer might help the individual, or asking the individual for an example of what a right is. Using simple language or pictures and symbols, speaking slowly and clearly, and asking concrete questions, are all ways to communicate with individuals who have mental retardation.

- Informal practices may also need to be modified. Sometimes, because of the demand for police services, third party calls are treated less seriously. Police officers should keep in mind that calling through a third party may be the only option for individuals with certain types of disabilities.

## VI. Resources

**24. Q:** It sounds like awareness and training are critical for effective interaction with individuals with disabilities. How can I find out more about the needs of my local disability community?

**A:** State and local government entities were required, by January 26, 1993, to conduct a “self-evaluation” reviewing their current services, policies, and practices for compliance with the ADA. Entities employing 50 or more persons were also to develop a “transition plan” identifying structural changes that needed to be made. As part of that process, the ADA encouraged entities to involve individuals with disabilities from their local communities. Continuing this process will promote access solutions that are reasonable and effective. Even though the deadlines for the self-evaluation, transition plan, and completion of structural changes have passed, compliance with the ADA is an ongoing obligation.

**25. Q:** Where can I turn for answers to other questions about the ADA?

**A:** Several resources are available providing information and assistance to law enforcement personnel.

- The Department of Justice's toll-free ADA Information Line answers questions and offers free publications about the ADA. The telephone numbers are: 800-514-0301 (voice) or 800-514-0383 (TDD). The following publications may be of particular interest:

*Commonly Asked Questions about Title II of the Americans with Disabilities Act (ADA)*

*Commonly Asked Questions Regarding Telephone Emergency Services*

- Independent Living Centers that serve people with disabilities are a good source of practical ideas and common-sense help. The Department of Justice can provide names and telephone numbers for the Centers in your State.
- The Police Executive Research Forum (PERF) in Washington, DC has developed a number of ADA publications that may be ordered by calling 202-466-7820 (voice) or 202-466-2670 (TDD).

*Take Another Look Series:*

*Seizure Recognition and Management* - Brochure

*Police Response to Seizures and Epilepsy* - Curriculum Guide

*Police Response to Seizures and Epilepsy* - Video

*Police Contact with People Who Have Hearing and Speech*

*Disabilities* - Trainers Guide

*Recognizing and Responding to People Who Have Mental*

*Retardation* - Trainers Guide

*Mental Illness: Police Response* - Brochure

*Mental Illness: Police Response* - Video

*Mental Illness: Police Response* - Trainer's Guide (available July 1996)

- The Arc of the United States offers publications about the ADA as it applies to people with mental retardation. The telephone numbers are: 817-261-6003 (voice) or 817-277-0553 (TDD). The following publications may be of interest:

*A Police Officer's Guide When In Contact With People Who Have  
Mental Retardation*

*Know Your Rights If You Get Arrested*

*When People with Mental Retardation Go to Court*

- Telecommunications for the Deaf, Inc. (TDI) has developed materials to assist managers and operators of "911" and other emergency response centers in being prepared to respond to calls from people who use TDDs (also called TTYs). Call 301-589-3786 (voice) or 301-589-3006 (TDD) for information about the *Emergency Access Self-Evaluation (E.A.S.E.) Package* and to obtain the TDI Products Order Form.

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9/12/96

