# Title II ADA Guide for Washington Courts

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# Introduction

The Washington State Courts are required, under Title II of the Americans with Disabilities Act (ADA) and Washington State Supreme Court General Rule 33 (GR 33), to provide accommodations to individuals with disabilities in an effort to provide them access to any activities that are afforded the general public.

This requirement can seem daunting at times—requiring a clear understanding of who is and is not covered under the law, the definitions of physical and mental disabilities, what constitutes an accommodation and what information and technology is available to make those accommodations. The Court Access Programs section of the Judicial Services Division of the Administrative Office of the Courts, has prepared this guide to help individual courts evaluate their current systems and to develop plans to improve those systems. Washington Courts need to be fully compliant with the requirements of the ADA, not only because it is the law, but because equal access to justice is a fundamental right.

This guide will:

* Identify and explain the goals associated with providing equal access,
* Give an overview of the ADA requirements,
* Make suggestions for development of an accommodation plan, and
* Define key terms in the ADA guidelines.

# Goals

A good Accommodation Plan is not one that simply meets the bare minimum requirements of the ADA and GR 33. A well-developed plan will be adaptable to the changing needs of the courts and the public. We’ve identified some short-term, long-term and ongoing goals to consider while developing your plan.

**Short-Term Goals**

1. Develop relationships with the disability community
   * Relationship building takes time, and a few small steps can help to open the lines of communication between the courts and the disability community:
2. Contact local disability advocacy groups and introduce yourself.

*This simple step lets people in the disability community know that you are interested in working with them to address concerns that they may have regarding access.*

1. Provide materials to local organizations/businesses that are frequently accessed by members of the disability community.

*By taking the initiative to provide the ADA Coordinator’s contact information, brochures regarding requesting reasonable accommodation and any other publications that are relevant to securing access for individuals with disabilities, you demonstrate that it is important to you that these issues are addressed successfully.*

1. Invite suggestions for improvement and fully consider them.

*Asking for suggestions is an important step in making positive changes in an area about which we may not have a full understanding. It’s possible, even after thorough evaluation of processes, something crucial may have been missed. Disability advocacy groups and individuals with disabilities who access the courts are in the best position to suggest possible improvements to current processes.*

1. Complete an ADA Assessment

*Provide clear expectations for whoever is tasked with assuring equal access to court services. Establishing clear roles and responsibilities helps to ensure that no aspect of successfully providing reasonable accommodation and access to justice falls between the cracks (A sample job description can be found on the Court Program Accessibility website).*

1. Adopt and Implement an accommodation plan, including:
   * Developing an ADA Policy Statement;
   * Appointing an ADA Coordinator (if your court is lacking one);
   * Developing a procedure for processing accommodation requests;
   * Developing a grievance procedure;
   * Notifying court users of your plan; and
   * Ensuring effective communication in publications, websites, notices and forms.

**Long-Term Goals**

1. Develop an accommodation budget;
   * Take into account future costs of trainings, tools and auxiliary devices.
2. Prioritize the procurement of auxiliary devices.
   * By determining which devices are most often needed, it is possible to decide which devices would be best purchased rather than acquired through lending or other means.

**Ongoing goals**

1. Provide or identify training for court employees and judicial officers;
   * *To prepare current and future staff to be efficient and effective at accommodating the needs of the community, courts should seek out opportunities to train and educate court staff on the ADA itself, the needs of people with disabilities, and proper etiquette for providing customer service to people with disabilities.*
2. Identify resources;
3. Maintain relationships with the disabled community;
4. Stay up-to-date on changes to State and Federal disability laws; and
5. Continue streamlining and improving processes for compliance.

# ADA in Brief

The Americans with Disabilities Act of 1990 outlined specific guidelines to be followed in an effort to end discrimination against people with disabilities. Title II of the ADA specifically addresses the requirements for public entities, including state courts. It’s important to be aware that, with regard to court participation, services are not limited to court proceedings. It includes any activities offered by the court to the general public.

When trying to determine the courts’ responsibility in providing accommodations, there are a few questions that need to be answered.

Some of the information and illustrations included here have been taken from the Americans with Disabilities Act Title II Technical Assistance Manual, which can be found at [www.ada.gov/taman2](http://www.ada.gov/taman2). We have attempted to cover the basics of the law that need to be understood as a context for provision of reasonable accommodations, but we do not intend it to be taken as a full explanation of the ADA rules. Links to the complete text of both the State and the Federal laws relating to reasonable accommodations for individuals with disabilities can be found on the AOC website.

## Who is Protected?

According to the ADA:

*A qualified individual with a disability is a person with a disability who, with or without auxiliary aids or services, meets the essential eligibility requirements for receiving services or participating in programs or activities provided by the court.*

*GR 33 clarifies that a person with a disability is qualified to receive an accommodation regardless of how he or she participates in a court activity. Courts can not limit access to accommodations to an individual with a disability because he or she doesn’t have official business with the court. For example, an individual with a qualified disability who would like to observe court proceedings is entitled to request and receive an accommodation.*

Three categories of individuals are covered under Title II:

1. Individuals who have a physical or mental impairmentthat *substantially limits* one or more *major life activities*;
2. Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual’s major life activities; and
3. Individuals who are regarded as having such an impairment, whether they have the impairment or not.

**Physical impairments** include physiological disorders or conditions, cosmetic disfigurement or anatomical loss that affect one or more of the following body systems:

* neurological
* musculoskeletal
* special sense organs
* respiratory (including speech organs)
* cardiovascular
* reproductive
* digestive
* genitourinary
* hemic and lymphatic
* skin
* endocrine

Physical impairments would include, for example: paralysis, amputation and other mobility impairments; blindness and low vision; deaf, hard of hearing and deaf-blind; speech impairment; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; HIV; tuberculosis; drug addiction and alcoholism.

**Mental impairments** would include intellectual disabilities, organic brain syndrome, emotional or mental illness and specific learning disabilities. Mental impairments would also include, for example:

* schizophrenia, bipolar disorder, and personality disorders
* traumatic brain injury, Alzheimer’s disease, organic brain syndrome and other cognitive impairments
* autism spectrum disorders
* specific learning disabilities—dyslexia (reading and related language-based learning disabilities); dyscalculia (mathematical disability); and dysgraphia (writing or fine motor skills deficit).

A key factor in determining whether an individual has a “qualified disability” is the “substantial” limitation of one or more “major life activities.” Major life activities include:

* caring for one’s self
* performing manual tasks
* walking
* seeing
* hearing
* speaking
* breathing
* learning
* working

The second and third prongs of the definition provided in the ADA—having a “record of” or being “regarded as” having a disability—are confusing to many people and have been widely addressed and tested by the courts. These two prongs aim to address the issue of discrimination, particularly in the area of employment, although they are also included in the Title II definition. Essentially, they are intended to prevent discrimination against people who may be mistaken for having a qualified disability, even though they do not have one in the present. For example, a person who has a slight speech delay, which does not limit “major life activities” may be assumed to also have a mental disability where none exists. The third prong of the definition would give the person recourse against someone who refused to hire him based on a cognitive deficiency that does not exist, while preventing the employer from defending herself by saying that there can be no discrimination against a person with a disability if no disability exists.

## Who is not Protected?

* Although drug addiction is considered an impairment under the ADA, this protection does not extend to addicts who are engaged in the current and illegal use of drugs.
* Homosexuality and bisexuality are not considered physical or mental impairments, and are, therefore, not covered under the protection of the ADA.
* The following conditions are specifically excluded from the definition of “disability”: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, and pyromania.
* Any individual who poses a direct threat to the health or safety of others is not considered a “qualified” individual. The ADA considers a “direct threat” to be a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the court’s modification of its policies, practices or procedures, or by the provision of auxiliary aids or services. *The court’s determination that someone poses that risk must not be based on generalizations or stereotypes about the effects of a particular disability.*

Determining whether a direct threat exists must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence to assess:

1. The nature, duration and severity of the risk;
2. The probability that the potential injury will actually occur; and,
3. Whether reasonable modifications of policies, practices or procedures will mitigate or eliminate the risk.

## General Requirements

The general prohibitions against discrimination in the federal regulations indicate that, with regard to individuals with qualified disabilities, a public entity may not:

* Deny the opportunity to participate in or benefit from the service;
* Afford a service or an opportunity to participate that is not equal to that afforded others;
* Provide a service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others;
* Provide different or separate services than are provided to others (except under specific circumstances); or
* Otherwise limit the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the service.

## Program Accessibility

Whether an individual qualifies for accommodation is something that is determined on a case-by-case basis. Any accommodation provided by the courts will be at no cost to qualified individuals with disabilities. Such accommodations include:

* Architecturally renovating facilities to make them readily accessible to and usable by an individual with disabilities.
* Relocating a service to enable a person with a disability to participate.
* Obtaining or modifying equipment or devices (including videophones or TDDs, assistive listening systems, videotext displays, or publishing materials in Braille and large print).
* Providing qualified readers and interpreters.
* Providing reserved parking for a person with a mobility impairment.
* Allowing a person with a disability to provide equipment or devices that the public entity is not required to provide.

## Title II Accommodation Requirements

To provide access to qualified individuals with disabilities, the courts are required to:

* Make reasonable modifications to policies and practices,
* Remove architectural, communication or transportation barriers, and
* Provide auxiliary aids and services. A public entity should give “*primary consideration*” to the auxiliary aid or service requested by the individual with the disability.

## Modification to Policies and Practices

Courts must examine existing policies and procedures for possible barriers to equal access and make any needed modifications. For example, although courts may have a policy barring people from bringing pets to court, the policy should contain an exception for service animals (*A Model Service Animal Policy can be found on the Court Program Accessibility website*).

## Architectural, Communication and Transportation Barriers

With the understanding that it is sometimes impossible to make a courthouse completely accessible to individuals with disabilities, there are other methods that can be used to assure the courts’ compliance with ADA requirements. For example, in order to allow program access, the court may move the program to an accessible location rather than attempting to make all of the necessary architectural changes to the existing location.

Communication is key to full participation in court services. To ensure effective communication, it may be necessary to provide various auxiliary devices upon request. The procedure for requesting an accommodation should be clear and made publicly available on the website, in any publications that are produced by the court, and posted in the courthouse itself. All requests should be documented and maintained in a separate file by the court’s ADA Coordinator.

Washington State Courts will attempt to provide appropriate aids and services to eliminate communication barriers within court services. The courts may not impose any surcharge or fee for use of auxiliary aids or services or for reasonable modification of services.

There are certain aids or services that courts are not required to provide under Title II of the ADA. They include:

* Transportation to the courthouse;
* Personal devices (i.e. wheelchairs, hearing aids, or prescription eyeglasses);
* Personal services (i.e. medical or attendant care); or
* Readers for personal use or study.

If there is a question regarding the requirement to provide an aid or service, please consult with the individual court’s ADA Coordinator. If a question still remains, please confer with the state ADA Coordinator.

It is important to note that the ADA Coordinator and court staff cannot accommodate requests that affect procedures in specific cases. They cannot grant a continuance or change of venue, and they cannot approve participation in court proceedings by telephone or video conferencing. These requests must be submitted by written motion to the presiding judge, who may consider an individual’s disability in determining whether to grant the request.

Additionally, the court cannot make changes to the law in granting an accommodation; it cannot extend the statute of limitations for filing an action because the requestor claims to have been delayed due to disability, nor can it provide accommodations that modify the terms of an agreement among parties.

## Undue Burden

There are certain situations where a court is not required to provide accommodation. For example, the ADA does not require courts to take any action that would impose an undue financial or administrative burden. If it is believed that providing a requested accommodation would result in a fundamental change to the program or service, or that it would impose an undue hardship, the ADA Coordinator should be notified immediately. The decision about whether the accommodation request imposes an undue hardship on the court should be made by the presiding judge or his/her designee.

## Determining What Accommodation is Appropriate

There are no strict guidelines regarding what qualifies as an appropriate request for an auxiliary aid or service. In cases that are unclear, rely on best judgment. There are some steps to consider in making this determination:

* The first step is always to consult the person who is in need of the accommodation. There is no one better qualified to determine what would work best for them.
* Work with the requestor to determine what the ideal solution would be. Barring the availability of the ideal aid, work with the person to identify a reasonable alternative. Consulting with the individual on what aid would suit him or her the best may give the court an opportunity to glean new information regarding simple and inexpensive methods of accommodation that can be offered in the future.
* Where possible, the court should try to provide the auxiliary aid or service that is preferred by the individual.
* When trying to determine the best available aid or service, remember that the purpose of the accommodation is to ensure equal benefit or enjoyment of the program.
* Keep in mind that the individual has the option to decline an accommodation and may choose to participate in the same manner as the general public.

Determining what accommodation is appropriate should be done by, or in collaboration with, the court’s ADA Coordinator. The ADA Coordinator should consult resource materials and disability experts and prepare a recommendation for approval by the presiding judge.

## Requesting Documentation of Need for an Accommodation

In situations where an individual has a disability that is not obvious, or when it is not apparent how the requested accommodation relates to an individual’s disability, it is acceptable for the court to require documentation from a qualified health care provider in order to fully and fairly evaluate the accommodations request. However, requests should be limited to documentation that:

* Establishes the existence of a disability;
* Identifies the individual’s functional limitations; and
* Describes how the requested accommodation addresses those limitations.

The court should not request any information regarding a physical or mental condition that is unrelated to the request for accommodation.

The person requesting the accommodation is responsible for any costs associated with obtaining necessary documentation.

The court’s ADA Coordinator should keep a record of any requested accommodation and any auxiliary aid or service that is provided.

## Accommodation for Jury Service

In cases where accommodation is needed for an individual serving on a jury, there are specific limitations and procedures to be considered. In cases where a juror is provided with a sign language interpreter, real-time transcriptionist or personal attendant, these individuals should be allowed into the jury room during deliberations. However, the auxiliary service provider should never counsel, advise, attempt to explain terms or interject personal opinion into the jury deliberations.

Real-time transcriptionists are not reporters of official record; the transcription of jury deliberations must be deleted immediately upon conclusion of jury deliberation. The reporter should never read back the real-time transcription from the proceeding or deliberations without the express approval or authorization from the presiding judge.

When utilizing auxiliary services in a proceeding, the presiding judge has the option of administering an oath of non-involvement, including language stating that the service provider will not interfere with the deliberation of the jury or reveal the confidences of the jury. See U.S. v. Dempsey, 830 F.2d 1084, 1090 (10th Cir. 1987); Guzman, 76 N.Y. 2d at 6-7 (clarifying that since a “signor” is a neutral figure, associated only with the fellow juror, her presence should not have an adverse impact on jurors). Before the verdict is announced, the judge may ask the service provider and the jury if the oath was abided by.

## Posting of Notices in the Courthouse

Notices should be posted inside the courthouse informing the public of the courts commitment to complying with the Americans with Disabilities Act. Additionally, notices should be posted with information regarding the procedure for requesting an accommodation, including the name and contact information of the court’s ADA Coordinator.

## Service Animals

Service animals are trained to perform tasks to assist an individual with a disability, which may include:

* guiding a person who is visually impaired,
* alerting a person who is deaf or hard of hearing,
* pulling a wheelchair,
* assisting with mobility or balance,
* alerting and protecting a person who is having a seizure,
* retrieving objects, or performing other special tasks.

A service animal is not a pet and should never be approached without the permission of its owner.

Service animals must be allowed into all areas of the courthouse that are available to the public. It is allowable to ask if an animal is a service animal, and to ask what service the animal has been trained to provide, but not to require an ID card proving the animals status as a service animal.

There are limited situations where a service animal can be required to leave the court facility. It is acceptable to ask someone to remove their service animal if:

* the animal is out of control and the owner is not able to control it (e.g. a dog that barks during court proceedings),
* the animal poses a direct threat to the health or safety of others (this generally does not include allergies or fear of the animal);

In situations where the animal is required to leave the facility, the owner should be given the option of continued participation without the animal present.

Courts are not required to make any provisions for service animals, such as food, supervision or a place for the animal to relieve itself.

# GLOSSARY

*Auxiliary Aids and Services*

Title II of the ADA requires government entities to make appropriate auxiliary aids and services available to ensure effective communication. An auxiliary aid or service is any device or aid that is designed to provide effective communication and participation for individuals with disabilities. An example of an auxiliary aid or service is an assistive listening system, but the term also includes services such as a sign language interpreter or removing an item from a high shelf for a person with a disability. Generally, the requirement to provide an auxiliary aid or service is triggered when a person with a disability makes a request.

*Effective Communication*

Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others. This requirement is referred to as effective communication and it is required except where a state or local government can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden.

What does it mean for communication to be effective? Simply put, effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. This is important because some people have disabilities that affect how they communicate.

How is communication with individuals with disabilities different from communication with people without disabilities? For most individuals with disabilities, there is no difference. But people who have disabilities that affect hearing, seeing, speaking, reading, writing, or understanding may use different ways to communicate than people who do not. There are many ways that the courts can provide equal access to communications for people with disabilities. These different ways are provided through auxiliary aids and services.

*Fundamental Alteration*

Public entities are required to make reasonable accommodations and provide reasonable auxiliary aids and services to any qualified individual who needs them. In rare cases, a certain accommodation will so drastically change the service, program, or activity that the public entity may not be required to make the accommodation. This defense is only available after the chief judge of chief judge's designee has formally concluded in writing that the accommodation would fundamentally change the nature of the service, program, or activity.

*Major Life Activities*

Under the ADA, an impairment meets the definition of a "disability" only if the impairment substantially limits one or more major life activities. Examples of major life activities include:

* walking
* speaking
* breathing
* performing manual tasks
* working
* seeing
* hearing
* learning
* caring for oneself
* sleeping
* standing
* lifting
* bending
* reading
* concentrating
* thinking
* communicating

Major life activities can also include major bodily functions, such as the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*Primary Consideration*

Primary consideration should be given to the auxiliary aid or service requested by the individual with the disability. A public entity should endeavor to obtain the requested method of accommodation unless the court can demonstrate that another equally effective accommodation is available or that the means chosen would result in a fundamental alteration in the nature of the service, program, or activity.

*Public Entity*

Public entity refers to any state or local government and all the departments, agencies, or other instrumentalities of that state or local government.

*Record of a Substantially Limiting Condition*

An individual who has a history of impairment, or who has a record of having been misclassified as having an impairment, meets this definition. For example: an individual who has a history of cancer or heart disease whose illness is cured, controlled or in remission, or an individual who was erroneously classified as having a learning disability.

*Regarded as Substantially Limited*

An individual who is perceived to have a substantially limiting condition even when this person does not have a substantially limiting impairment. For example an individual who has high blood pressure which is not substantially limiting, but an employer regards the high blood pressure as disabling or possibly disabling. Individuals will not be regarded as having a substantially limiting impairment if the perceived impairment is transitory (six months or less of actual or expected duration) and minor.

*Substantially Limits*

Three factors in determining whether a person's impairment substantially limits a major life activity are: (1) nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or long-term impact or expected impact.

The beneficial effects of medication, medical supplies, equipment or appliances, low-vision devices, prosthetics, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids and services; or learned behavioral or adaptive neurological modifications may not be considered when determining whether an impairment substantially limits a major life activity. However, the beneficial effect of ordinary eyeglasses or contact lenses should be considered in the determination. Furthermore, if an impairment that is episodic or in remission substantially limits a major life activity when active, it may be a disability.

*Undue Burden*

The ADA does not require the court to make any accommodations that place an undue financial or administrative burden on the courts. An undue burden is defined as "significant difficulty or expense." It is evaluated on a case-by-case basis, relative to the state or local government entity’s overall resources. Asserting the defense of undue burden requires a greater showing of hardship than simply that the provision of auxiliary aids or services will be difficult or expensive. Further, when a particular communication aid or service would cause an undue burden, the court must provide another communication aid or service that still is effective but is less difficult or costly, if one is available. For example:

It would be an undue burden for a court to have a sign language interpreter available all the time to assist walk-in court users. However, when requested by a litigant or other court participant in advance, the court can arrange for an interpreter to be available at a specified time.

If after considering all available resources a determination of "undue burden" is made, the chief judge or chief judge's designee must prepare a written statement explaining such a decision.

To summarize, decisions on undue burden:

* Must be made by head of public entity or designee.
* Must consider all resources available for use in the funding and operation of the program.
* Must be accompanied by a written statement of the reasons for the conclusion.
* A public entity shall take any other action that would not result in such an alteration or burden.