



**DEPARTMENT OF CORRECTIONS  
Administration**



<b>Title:</b>	<b>Accessibility for Adults in Custody with Disabilities</b>	<b>DOC Policy: 40.2.14</b>
<b>Effective:</b>	<b>11/06/20</b>	<b>Supersedes: N/A</b>
<b>Applicability:</b>	<b>DOC employees, contractors, volunteers and OCE employees</b>	
<b>Directives Cross-Reference:</b>		
<b>Rule: 291-006 Discrimination Complaint Review System (AIC)</b> <b>291-109 Grievance Review System (AIC)</b> <b>Policy: 40.2.11 Effective Communication Policy</b> <b>Americans with Disabilities Act (ADA) 42 U.S.C. § 12101</b> <b>ORS 659A.104</b>		

**I. PURPOSE**

The purpose of this policy is to ensure that qualified adults in custody (AICs) with disabilities are included in participation in and have access to the benefits of Department of Corrections (DOC) programs, services, and activities as provided by and consistent with Department rules, state law, and federal law.

**II. DEFINITIONS**

- A. Accessibility request: A request to modify department rules, policies, or practices, to remove architectural, communication, or transportation barriers, or to provide auxiliary aids and services for a qualified AIC with a disability to participate in or access the benefits of department programs, services, or activities.
- B. Adult in Custody (AIC): Any person under the supervision of the Oregon Department of Corrections who is not on parole, probation, or post-prison supervision status.
- C. Americans with Disability Act (ADA): The federal law, Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, as amended by the ADA Amendments Act of 2008 (Public Law 110-325.)
- D. Disability: As defined in ORS 659A.104, disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment. This term shall be construed consistently with ORS 659A.104, including any exceptions and rules of construction.
- E. Institution AIC ADA Coordinator: DOC employee(s) at each institution or facility who are assigned to ensure compliance with state and federal law governing access to department programs, services, and activities for individuals with disabilities, and to coordinate efforts

to comply with and carry out responsibilities under the ADA regard to AICs and respond to AIC ADA grievances.

- F. Major Life Activities: This term shall be construed consistently with ORS 659A.104, including any exceptions and rules of construction, and otherwise includes but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- G. Statewide AIC ADA Coordinator: A DOC employee or designee who is designated to carry out the Department's responsibilities to comply with state and federal anti-discrimination laws concerning incarcerated persons with disabilities, including investigation and resolution of accessibility requests.

### III. POLICY

#### A. Intake Process

Upon arriving at intake, or during new AIC orientation, AICs will be provided the following information using an effective means of communication:

1. DOC Effective Communication Policy 40.2.11;
2. Notice of Rights for Offenders with Disabilities (form #1871); and
3. Institution AIC ADA Coordinator contact card (form #1870).

#### B. Institution Employee Responsibility

1. Reasonable efforts will be made by employees to identify AICs with disabilities at each DOC institution or facility.
2. The identification process will be interactive and include employee observations, AIC reports, or documentation of an AIC's disability.
3. Referrals will be made to Health Services or the Institution AIC ADA Coordinator for evaluation if a disability is suspected by an employee that would affect access to DOC programs, services, or activities or if the AIC reports a disability that would affect access to DOC programs, services, or activities.
4. Behavioral Health Services (BHS) may identify an AIC as having a developmental or intellectual disability if eligible and enrolled in their services.

#### C. AIC ADA Accessibility

1. The Statewide AIC ADA coordinator may review an AIC's related protected medical information, consult with DOC Health Services, and request medical assessments in

accordance with health services policies and standards for the purposes of providing ADA accessibility and ensuring agency compliance.

2. The Institution AIC ADA Coordinator will develop a process to ensure that employee(s) receive updated information regarding specific needs of AICs with disabilities.

#### D. Accessibility Request Determinations

1. All accessibility requests will be reviewed on a case-by-case basis consistent with applicable state and federal anti-discrimination laws. The Institution AIC ADA coordinator will investigate the request prior to making a determination.
2. The Institution AIC ADA Coordinator may approve the accessibility request, with or without modifications that are agreed to by the AIC or forward the request to the Statewide AIC ADA Coordinator for further review.
3. The Statewide AIC ADA Coordinator may request a health services assessment and schedule a meeting or phone conference with the AIC and any involved employee in order to facilitate the interactive accessibility process.
4. The Institution AIC ADA Coordinator will provide the AIC with a written response to all written requests received by the Institution AIC ADA Coordinator and will distribute any approved accessibility requests to the appropriate parties.
5. Institution AIC ADA Coordinators are responsible to ensure that all approved accessibility requests are implemented.
6. AICs may refuse or discontinue an approved or offered disability accessibility, whether that is a modification to DOC rules, policies, or practices, removal of architectural, communication, or transportation aids, or the provision of auxiliary aids or services.
  - a. The Statewide AIC ADA Coordinator, in consultation with the Inspector General or designee and Health Services will review any refusal or discontinuation of any disability accessibility.
  - b. The Institution AIC ADA Coordinator will be notified of all refusals or discontinuations of approved disability accessibility and shall in turn notify any section of the institution that needs to be informed of the refusal or discontinuation. The Institution AIC ADA Coordinator shall ensure that any necessary records are updated.
  - c. For a refused accessibility to be reinstated, the AIC must resubmit an accessibility request.

#### E. Accessibility Request Denials

1. All denied accessibility requests are determined by the Inspector General or designee and Statewide AIC ADA Coordinator in consultation with the Institution AIC ADA Coordinator, and must include one or more of the following justifications:
  - a. Undue financial or administrative burden: i.e. budgetary constraints or creation of an organizational or employee obligation which cannot be reasonably accomplished;
  - b. Fundamental alteration to the purpose of the service, program, or activity: i.e. modifications to work assignments which result in operational disruptions or elimination of program requirements which directly correlate to the purpose or efficacy of the program;
  - c. Direct threat of significant or substantial harm to the safety and security of the institution, AIC population, or public safety that cannot be reduced or eliminated: i.e. modification or elimination of safety or security practices;
  - d. The AIC does not have a disability that substantially affects major life activities;
  - e. The AIC is not otherwise qualified to participate in the DOC program, service, or activity the AIC is seeking access to in the accessibility request;
  - f. The accessibility request would not be effective in making DOC programs, services, or activities accessible to that AIC;
  - g. The accessibility request does not relate to the AIC's disability;
  - h. Medical issue: Request is for or about medical care and treatment: i.e. prescription medication, health care equipment, or medical or housing restrictions; or
  - i. Unreasonable: i.e. records or investigation does not support a substantial limitation or disability access issue, or a reasonable, equally effective alternative is available.
2. Regardless of the outcome of the accessibility request, Institution AIC ADA coordinators may take the necessary steps to resolve any legitimate allegation of disability discrimination to ensure compliance with state and federal anti-discrimination laws, including but not limited to: policy and practice adjustment, resolving criteria that tends to screen out AICs with disabilities, or initiating AIC movement to accessible housing in accordance with classification regardless of disability.

#### F. Emergency Evacuation

Each institution shall ensure the safe and effective evacuation of AICs and shall develop evacuation procedures specific to the institution in order to address the needs of AICs with disabilities.

#### G. ADA Training

1. The Statewide AIC ADA Coordinator and the Institution AIC ADA coordinators will receive specialized training in ADA.
2. All new DOC employees, contractors, and volunteers will complete ADA training.
3. All DOC employees, contractors, and volunteers will complete annual ADA refresher training.

#### H. Americans with Disability Act Complaint Process

1. All allegations regarding alleged discrimination or any related ADA concerns will be filed utilizing the process outlined in OAR 291-109 Grievance Review System (AIC). The Institution ADA Coordinator will be assigned to assist in the investigation, the complaint will be responded to by the Statewide AIC ADA Coordinator in consultation with the Institution ADA Coordinator. All appeals will be processed in accordance with OAR 291-109 Grievance Review System (AIC).
2. Allegations of inappropriate comments to or about an AIC's disability will be filed utilizing the process outlined in OAR 291-006 (Discrimination Complaint Review System). The Institution Discrimination Complaint Coordinator, or other assigned staff, will coordinate the investigation. The Discrimination complaint will be responded to by the appropriate Functional Unit Manager. The discrimination complaint appeal will be processed in accordance with OAR 291-006.
3. AICs have the right to correspond with and receive a response from an Institution AIC ADA Coordinator or the Statewide AIC ADA Coordinator regarding concerns of disability discrimination or any ADA related matter.
4. The Institution AIC ADA Coordinator cannot be grieved for claims involving medical treatment or the scope and quality of medical care. Grievances claiming such issues shall be made against the appropriate Health Services provider.

#### I. Responsibility

The Inspector General or designee within the Office of the Inspector General has the final authority on determination and enforcement of the ADA within the DOC as it pertains to AICs and institution operations.

### **IV. IMPLEMENTATION**

This policy will be adopted immediately without further modification.

Certified: \_\_\_\_\_signature on file \_\_\_\_\_

Michelle Mooney, Rules Coordinator

Approved: \_\_\_\_\_signature on file \_\_\_\_\_

Heidi Steward, Deputy Director