

TRAVIS COUNTY CRIMINAL COURTS

Policy and Procedures Manual For Ensuring Effective Communications with Individuals with Disabilities

The Americans with Disabilities Act (ADA), a federal civil rights statute, requires all state and local governmental entities, including the courts, to accommodate the needs of persons with disabilities who have an interest in court activities, programs, and services. In accordance with this statute, the Travis County Criminal Courts adopted the following policy and procedures for ensuring effective communications with individuals with disabilities.

I. Policy

It is the policy of the Criminal Courts to ensure that communications with individuals with disabilities in our programs, services, and activities are as effective as communications with individuals without disabilities, consistent with the requirements of Title II of the Americans with Disabilities Act (ADA)¹. To meet this obligation, the Criminal Courts will provide, free of any additional charge, appropriate auxiliary aids and services, whenever necessary, to ensure that individuals with disabilities have an equal opportunity to participate in, and benefit from, the Court's programs, services, and activities.² This policy applies to all members of the public who seek to participate in the Court's programs, services, and activities, including parties to legal proceedings and their companions, witnesses, jurors, and spectators.

(a) What Are Appropriate Auxiliary Aids and Services?

Appropriate auxiliary aids and services include a wide variety of equipment, materials, and personal services that may be necessary to ensure effective communication for people with disabilities.³

- (1) **For people who are blind or have low vision**, appropriate auxiliary aids and services include, but are not limited to, qualified readers; printed information provided in Braille, in large print, in electronic format, or through audio recordings; oral descriptions of action and visual information to ensure the accessibility of proceedings and presentations; note takers; assistance in filling out forms or accessing materials in a computer database; screen reader software or text magnification software to make computer displays accessible; or an

¹ 42 U.S.C. §§ 12131 - 12134, and regulations implementing Title II, 28 C.F.R. pt. 35 (and for government entities receiving federal funding, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the implementing regulation, 28 C.F.R. Part 42, Subpart G)

² 28 C.F.R. §§ 35.130(f), 35.160(b)(1)

³ 28 C.F.R. §§ 35.104, 35.160.

assistant to guide a person to find his or her way to an unfamiliar location or along an unfamiliar route.

- (2) **For people who are deaf, are hard of hearing, or have speech impairments,** appropriate auxiliary aids include, but are not limited to, qualified oral/sign language interpreters, written notes, note takers, computer-assisted real-time transcription services, video text displays, amplified and hearing aid compatible telephones, assistive listening systems, open or closed captioning and caption decoders, teletypewriters (TTYs), computer terminals equipped for video communication, and other effective methods of making information or materials delivered using sound available to individuals who are deaf or hard of hearing.

(b) What does the term “qualified interpreter” mean?

The term "qualified interpreter" includes "sign language interpreters," "oral interpreters," or other "interpreters" who are able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication with an individual who is deaf or hard of hearing or who has a speech impairment, given that individual's language skills and education. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Also, someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign language interpreter." Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter.⁴ An interpreter who knows tactile interpreting may be the only interpreter who is qualified to interpret for someone who is both deaf and blind. Although an interpreter may be certified, a certified interpreter is not necessarily "qualified." Similarly, certification is not required in order for an interpreter to be "qualified."

(c) Can the Court ask or require family members or friends of individuals who are deaf, are hard of hearing, or have speech impairments to interpret for them?

No. The Court may not ask or require friends or family members to interpret for individuals who are deaf, are hard of hearing, or have speech impairments because a family member or friend may not be qualified to render the necessary interpretation due to factors such as professional or personal involvement.

(d) Can the Court charge an individual with a disability for the cost of providing an auxiliary aid or service needed for effective communication?

No. People with disabilities must not be asked to pay for, or be charged for the cost of an

⁴ 28 C.F.R. § 35.104

auxiliary aid or service needed for effective communication.⁵ For example, the Court may generally charge its standard per page fee for providing a person with a disability a copy of a document. However, the fee charged for a copy of a document provided in Braille or large print format may not exceed the charge ordinarily imposed for a standard print copy of the same document. Likewise, individuals with disabilities may not be charged the costs of converting a print document to a different format or for the additional pages that will likely result from that format change.

(e) Are there specific procedures for requesting auxiliary aids and services?

Whenever possible, requests for auxiliary aids and services should be directed to Debra Hale, the Criminal Court's ADA Coordinator, Room 2.700, Blackwell Thurman Criminal Justice Center, 509 W. 11th Street, Austin, Texas, 78701, 512/854-3682, debra.hale@traviscountytexas.gov. Requests can be made by an individual with a disability who need the auxiliary aids or services, or by someone acting on that individual's behalf. When the Court's ADA Coordinator is not available to receive a request, the request should be directed to her designee, Margaret Terronez in Room 2.700, Blackwell Thurman Criminal Justice Center, 509 W. 11th Street, Austin, Texas, 78701, 512/854-3682, margaret.terronez@traviscountytexas.gov. Requests can be made either in writing or orally. Requests should be made in advance, whenever possible, in order to better enable the Court to address the communication needs of the individual. However, it is the policy of the Court for all requests for auxiliary aids and services submitted to Court personnel to be addressed promptly and in accordance with ADA requirements.

(f) How will the Court determine which auxiliary aids and services to provide?

In determining which types of auxiliary aids and services to provide, the Court will give "primary consideration" to the request of the individual with a disability. "Primary consideration" means that the Court will defer to the individual's request unless the Court determines that it has an equally effective alternative, given the nature, circumstances, length, complexity, and importance of the communication, as well as the communication skills of the person with the disability for whom auxiliary aids and services have been requested.⁶

(g) How will the Court handle requests for auxiliary aids and services?

Court personnel will confer with the individual with the disability upon notification that any auxiliary aids and services may be required to ascertain the circumstances, requirements, and

⁵ 28 C.F.R. § 35.130(f)

⁶ 28 C.F.R. § 35.160(b)(2)

preferences of the individual. The Court will respond promptly to requests for auxiliary aids and services so that delays in responding do not deny individuals with disabilities an equal opportunity to participate in, and benefit from, the Court's programs, services, and activities. Documentation of disability will generally not be requested or required. All non-routine requests will be promptly referred to the Criminal Courts ADA Coordinator (or her designee) for review, consideration and response.

Court personnel will maintain records of requests for auxiliary aids and services except for simple requests that can be immediately granted (*e.g.*, guiding a blind person to the correct courtroom, responding to a relay call placed by a deaf individual, or providing an assistive listening device to a person who is hard of hearing). Court personnel will ensure the confidentiality of this information and will keep it in a secure location separate from other records (such as court case files) relating to the individual with a disability.

The Court will not disclose information about an individual's disability or requests for auxiliary aids and services except to court personnel who have a need to know this information (*e.g.*, to make a decision on a request and/or to provide the auxiliary aids and services). Information about an individual's disability and requests for auxiliary aids and services will not be disclosed to individuals who have no legitimate need to know this information, including court personnel and participants in court proceedings.

(h) What records will the court keep regarding auxiliary aids and services?

Except for simple requests that are immediately granted, the ADA Coordinator will maintain records of requests for auxiliary aids and services and actions taken to address them.⁷ If the requested auxiliary aids and services are not being provided, records must include a description of any auxiliary aids and services that were provided /offered, the date they were provided/offered, the date of and reasons for denying the requested auxiliary aids and services, and the name of the Judge or the ADA Coordinator. When a request is denied because the provision of the requested auxiliary aids and services would result in a fundamental alteration or undue financial and administrative burdens, additional requirements must be met.

(i) What should Court personnel do if they believe that provision of requested auxiliary aids and services will result in a fundamental alteration or impose undue financial and administrative burdens on the Court?

The Court is not required to provide a requested auxiliary aid or service if the Court can demonstrate that providing it would result in a fundamental alteration to the nature of the Court's programs, services, and activities or impose undue financial and administrative burdens.

⁷ These records will include the date on which the request was made, the name of the individual making the request, the name of the individual for whom the auxiliary aids and services are sought, the auxiliary aids and services requested, the date on which a response to the request was provided, a description of the auxiliary aids and services provided, and the date on which the auxiliary aids and services were provided.

However, in circumstances where the Court has determined that providing the requested auxiliary aid or service would result in a fundamental alteration or undue financial and administrative burdens, the Court shall take any other actions that would not result in a fundamental alteration or undue financial and administrative burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities have an equal opportunity to participate in, and benefit from, the Court's programs, services, and activities.

All decisions denying the provision of a requested auxiliary aid or service on the grounds that doing so would result in a fundamental alteration or impose undue financial and administrative burdens must be made by a Judge or his/her designee after considering all resources available to the Court for use in the funding and operation of our services, programs, and activities and must be accompanied by a written statement of the reasons for reaching that conclusion.⁸

Any questions about this policy should be directed to Debra Hale, the Criminal Court's ADA Coordinator, Room 2.700, Blackwell Thurman Criminal Justice Center, 509 W. 11th Street, Austin, Texas, 78701, 512/854-3682, debra.hale@traviscountytexas.gov. If the ADA Coordinator is not available, questions may be directed to Margaret Terronez, Room 2.700, Blackwell Thurman Criminal Justice Center, 509 W. 11th Street, Austin, Texas, 78701, 512/854-3682, margaret.terronez@traviscountytexas.gov.

II. Procedures

(a) Requesting accommodations

- (1) Requests for accommodations may be presented by an individual or his/her representative on a form approved by the Travis County Criminal Courts, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (a)(3).
- (2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.
- (3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 3 court days before the requested implementation date. The court may, in its discretion, waive this requirement.
- (4) The Court will keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information

⁸ 28 C.F.R. § 35.164

pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

(b) Permitted communication

Communications under this procedure must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

(c) Response to accommodation request

The court must promptly respond to a request for accommodation as follows:

- (1) The Court will consider, but is not limited by, the provisions of the Americans With Disabilities Act of 1990, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.
- (2) The Court will inform the applicant in writing, as may be appropriate, and if applicable, in an alternative format, of the following:
 - (A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted;
 - (B) The nature of the accommodation to be provided, if any; and
 - (C) The duration of the accommodation to be provided.
 - (D) If the response is in writing, the date the response was delivered in person or sent to the applicant.

(d) Denial of accommodation request

A request for accommodation may be denied only when the court determines that:

- (1) The applicant has failed to satisfy the requirements of these procedures;
- (2) The requested accommodation would create an undue financial or administrative burden on the court; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

(e) Review procedure

- (1) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by non-judicial court personnel within 10 days of the date of the response by submitting, in writing, a request for review to the Local Administrative Judge or designated judicial officer.
- (2) An applicant or any participant in the proceeding in which an accommodation request has been denied or granted may seek review of a determination made by a judge or another judicial officer within 10 days of the date of the notice of determination by filing a request for extraordinary relief with the Presiding Judge of the Third Administrative Judicial Region.
- (3) The confidentiality of all information of the applicant concerning the request for accommodations and review under (e)(1) or (2) must be maintained as required under (a)(4).

(f) Duration of accommodations

The accommodation by the Court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified, unless no longer needed. The duration of the accommodation[s] will be determined by the Court, taking in to consideration the factors set forth above.