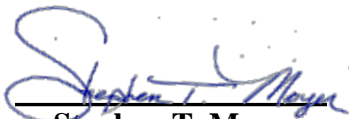
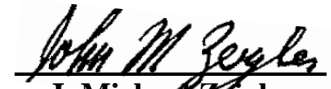


Executive Directive



Title: Policy Statement — Inmates with a Hearing Disability	Executive Directive Number: OPS.200.0004 Revised
Related Statute/Regulations: Correctional Services Article, §2-103, Annotated Code of Maryland; Americans with Disabilities Act of 1990 (ADA), Title II (Public Services)	Supersedes: OPS.200.0004 dated 01/04/16
Related ACA Standards: 4-4142, 4-4277, 4-4429, 4- 4429-1, 4-4450, 4-4475, 4-4497; 4-ALDF-6B-02, 04, 05 & 06	Responsible Authority: Commissioner of Correction Commissioner Pretrial Detention and Services Director Patuxent Institution Director Division of Parole and Probation
Related MCCS Standards: COMAR 12.14.03.06A, 12.14.04.05A, 12.14.05.05A	Effective Date: April 27, 2016 Number of Pages: 12


Stephen T. Moyer
 Secretary


J. Michael Zeigler
 Deputy Secretary
 for Operations

.01 Purpose.

This directive continues Department of Public Safety and Correctional Services (Department) policy for applying appropriate provisions of the Americans with Disabilities Act of 1990 (ADA), Title II — Access to Public Services to individuals in the custody of or under supervision by the Department.

.02 Scope.

This directive applies to all Department employees responsible for the care, custody, or supervision of an inmate or an individual on parole, mandatory supervision, or probation.

.03 Policy.

- A. The ADA, prohibits discrimination against an inmate or individual under the supervision of the Department who is a qualified individual with a disability with regard to access to services, programs, or activities available to an inmate or supervisee while in custody or under supervision by the Department.
- B. The Department shall make reasonable accommodations to enable an inmate or supervisee who is a qualified individual with a disability to participate in or have access to Department services, programs, or activities available to an inmate or supervisee.

.04 Definitions.

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.

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- (1) “Administrative” includes all activities and costs related to providing Department correctional, detention, pretrial services, or parole and probation.
- (2) Auxiliary Aids and Services.
 - (a) “Auxiliary aids and services” means methods of making aurally delivered materials available to individuals with a hearing disability.
 - (b) “Auxiliary aids and services” include, but may not be limited to:
 - (i) Qualified interpreter;
 - (ii) Hearing aid;
 - (iii) Computer-aided transcription service;
 - (iv) Assisted listening system;
 - (v) Closed caption decoder;
 - (vi) Open and closed captioning;
 - (vii) Telecommunications Device for the Deaf (TDD) and (TTY);
 - (viii) Video text display;
 - (ix) Written material;
 - (x) Videophone;
 - (xi) Telephone relay service;
 - (xii) An interpreter; and
 - (xiii) Visual alert or alarm system.
 - (c) “Auxiliary aids and services” do not include items such as:
 - (i) A vibrating clock; or
 - (ii) An in-line amplifier.
- (3) “Case record” means the electronic and paper record for an inmate that is created and maintained in accordance with Correctional Services Article, §3-601, Annotated Code of Maryland and includes:
 - (a) A complete physical description;
 - (b) A current photograph;

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- (c) Information concerning the current crime or crimes for which the individual was convicted;
 - (d) The sentence or sentences imposed for the conviction or convictions;
 - (e) The individual's prior criminal and juvenile history;
 - (f) Pre-sentence investigation, parole, probation, and other reports prepared concerning the individual;
 - (g) School records; and
 - (h) Other information concerning the individual.
- (4) Deaf.
- (a) "Deaf" means that an individual:
 - (i) Is unable to hear well enough to rely on hearing as a means of processing information;
 - (ii) Relies on auxiliary aids or services in order to effectively communicate; and
 - (iii) Qualifies as an individual with a disability under provisions of the Americans with Disabilities Act (42 U.S.C. §12102(4); P.L. 110-325).
 - (b) "Deaf" does not include an individual who is hard of hearing.
- (5) "Disability" means:
- (a) A physical or mental impairment that substantially limits one or more of the major life activities, such as walking, seeing, learning, or hearing;
 - (b) A record of an impairment that substantially limits one or more of the major life activities; or
 - (c) Being regarded as having an impairment that substantially limits one or more of the major life activities.
- (6) Effective Communication.
- (a) "Effective communication" means communication with a deaf inmate that is as effective as communication with a non-deaf inmate.
 - (b) "Effective communication" may require an appropriate auxiliary aid or service or qualified interpreter.
- (7) "Hard of hearing" means that an individual whose hearing is corrected by the use of a hearing aid so as to be able to:
- (a) Understand the spoken word;

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- (b) Communicate orally; and
 - (c) Use a standard telephone.
- (8) “Inmate” means an individual who is in the actual or constructive custody of a correctional facility operated by the Department and includes individuals referred to as a detainee, resident, or offender.
- (9) Intake.
- (a) “Intake” means the process beginning at the time an individual is taken into Department custody at a Department correctional facility through the time the individual is received and assigned to a unit of a Department maintaining facility.
 - (b) “Intake” includes, but is not limited to:
 - (i) Orientation;
 - (ii) Medical testing;
 - (iii) Psychological testing;
 - (iv) Educational testing and evaluation; and
 - (v) Housing assignment.
- (10) Interpreter.
- (a) “Interpreter” means an individual who, using a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
 - (b) “Interpreter” includes, but is not limited to:
 - (i) Sign language interpreter;
 - (ii) Oral transliterator; or
 - (iii) Cued-language transliterator.
- (11) “Limited English Proficiency (LEP)” means the inability to adequately understand or express oneself in the spoken or written English language.
- (12) “Qualified individual with a disability” under Title II of the ADA – Access to Public Services, means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the

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receipt of services or the participation in services, programs, or activities provided by the Department.

(13) Qualified Interpreter.

- (a) “Qualified interpreter” means an individual who is able to interpret effectively, accurately, and impartially, both receptively and expressively, with a deaf individual using a specialized vocabulary.
- (b) “Qualified interpreter” is based on the needs of the deaf individual and may include, but not be limited to a:
 - (i) A sign language interpreter;
 - (ii) An oral interpreter;
 - (iii) A cued speech transliterator; or
 - (iv) A tactile interpreter for an individual who may be deaf and blind.
- (c) “Qualified interpreter” is an individual who is currently certified by:
 - (i) Registry of Interpreters for the Deaf (RID) as a CI/CT, CSC, MCSC, OTC, CDI, or RSC;
 - (ii) National Association for the Deaf (NAD) at Levels 3, 4, or 5;
 - (iii) NAD/RID National Interpreter Certification as a NIC, NIC Advanced, or NIC Master;
 - (iv) Cued Language Transliterator National Certification; or
 - (v) A qualified Maryland organization with the same or substantially equivalent proficiency standards as the institutions identified under §.04B(13)(c) of this directive.

(14) “Reasonable accommodation” under Title II of the ADA — Access to Public Services, means reasonable modifications to a policy, practice, or procedure that permits a qualified individual with a disability to participate in a service, program, or activity without resulting in a fundamental alteration to the service, program, or activity or causing an undue financial or administrative burden to the Department.

(15) “Telecommunications Device for the Deaf (TDD)” means a teleprinter or teletypewriter” (TTY), an electronic device for text communication over a telephone line, that is designed for use by an individual with a hearing or speech disability.

.05 Responsibility/Procedures.

A. The Deputy Secretary for Operations, or a designee, shall ensure that:

- (1) Inmate assessment includes practices that attempt to identify an inmate with a hearing disability that qualifies the inmate as an individual with a disability as defined under this directive.

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- (2) The case management plan developed for the inmate includes:
 - (a) Reasonable accommodations necessary to ensure that an inmate identified as a qualified individual with a disability based on a hearing disability is not unreasonably denied access to or participation in Department services, programs, or activities based on the inmate's hearing disability; and
 - (b) If appropriate, special placement in services and programs designed to address an inmate's hearing disability while meeting the inmate's educational and vocational needs.
- (3) When requested by an inmate with a hearing disability that qualifies the inmate as an individual with a disability, reasonable accommodations are made to remove barriers that prevent the individual from participating based on the individual's hearing disability.
- (4) Housing for an inmate with a hearing disability that qualifies the inmate as an individual with a disability includes reasonable accommodations necessary to address the inmate's hearing disability.
- (5) If an inmate has a recognized hearing, speech, or literacy disability; or has limited English proficiency, reasonable accommodations are made to provide written and oral communication in a manner or format that facilitates the inmate in understanding the message communicated.
- (6) An Office of Operations employee is designated as the ADA, Title II Coordinator (ADA Coordinator) for issues related to inmates with disabilities and that the name and contact information for the ADA Coordinator is posted:
 - (a) In a secure location in each housing unit to which a deaf inmate is assigned; and
 - (b) On the Department's public website.
- (7) Each correctional facility, pretrial facility and Division of Parole and Probation regional office has designated a facility Auxiliary Aides and Services Designee.

B. The Operations ADA Coordinator shall:

- (1) Coordinate all Department activities required under provisions of ADA, specifically Title II (Access to Public Services) related to participation in Department services, programs, and activities by an inmate or supervisee determined to be a qualified individual with a disability based on a hearing disability.
- (2) Ensure that facility Auxiliary Aides and Services Designees submit quarterly reports to the Operations ADA Coordinator in a format determined by the Operations ADA Coordinator that, at a minimum:
 - (a) Lists, by name and SID number, inmates housed at the correctional facility or supervisees under supervision by the Division of Parole and Probation field office determined to be a qualified individual with a disability based on a hearing disability;

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- (b) Identifies the inmate's or supervisee's disability;
 - (c) Indicates the inmate's housing location in the facility or supervisee's DPP field office assignment;
 - (d) Indicates programs to which the inmate or supervisee is assigned;
 - (e) Indicates the auxiliary aid or service required by the inmate or supervisee;
 - (f) Provides the number of ADA Title II complaints filed;
 - (g) Provides the number of ADA complaints resolved, identifying accommodations made;
 - (h) Lists the Auxiliary aid or services available for use; and
 - (i) Lists equipment maintained at the facility or DPP field office for use by an inmate or supervisee qualified as an individual with a disability.
- (3) Review records maintained by a facility Auxiliary Aides and Services Designee concerning requests by a deaf inmate for auxiliary aids and services not available through the Commissary.
- (4) Conduct follow up activities to ensure compliance with ADA, Title II requirements at facilities housing or DPP field offices supervising an inmate or supervisee qualified as an individual with a disability based on a hearing disability.
- C. A facility Auxiliary Aides and Services Designee at a facility housing an inmate qualified as an individual with a disability shall:
- (1) Ensure compliance with provisions of ADA, Title II related to personal services for inmates qualified as individuals with disabilities;
 - (2) Coordinate provision of auxiliary aids and services;
 - (3) Maintain a current list of all inmates qualified as individuals with disabilities recording the information required under §.05B(2) of this directive;
 - (4) Ensure that custodial staff are aware of the presence of inmates qualified as individuals with disabilities at the facility and the auxiliary aids and services authorized for each inmate;
 - (5) Ensure that as soon as possible a receiving facility is notified that an inmate qualified as an individual with a disability is being transferred to that facility and identifying auxiliary aids and services that are to be provided;
 - (6) Ensuring that appropriate staff are familiar with:
 - (a) The process for providing auxiliary aids and services; and
 - (b) How to use and maintain equipment, such as videophones, TDDs, TTYs; and

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- (7) Review the following related to issues concerning deaf inmates:
 - (a) Written complaints and related appeals filed by a deaf inmate through the Administrative Remedy or Inmate Grievance process.
 - (b) Results of the outcome of filing of a complaint regardless of a decision that is favorable or unfavorable for the inmate.
- (8) Maintain records of requests by a deaf inmate for auxiliary aids and services that are not available through the Commissary.
- (9) Arrange for the managing official to meet, at least quarterly, with deaf inmates assigned to that facility to discuss issues related to deaf inmates and that a qualified interpreter and appropriate auxiliary aids or services are present to properly conduct the meeting.

D. A DPP region Auxiliary Aides and Services Designee with oversight of a DPP field office supervising a supervisee qualified as an individual with a disability based on a hearing disability shall perform applicable actions identified for a facility Auxiliary Aides and Services Designee under §C of this directive.

E. Intake — Pretrial Facility:

- (1) As part of the initial medical assessment to determine if an inmate is fit to undergo the pretrial intake process, medical staff performing the assessment and determining to accept the individual shall:
 - (a) Take appropriate steps to determine if the individual is deaf or has a hearing impairment; and
 - (b) If a hearing disability is identified, record the disability on the assessment and notify pretrial intake staff of the disability.
- (2) Pretrial intake staff notified under §.05E(1)(b) of this directive shall:
 - (a) Communicate, to the degree possible, with the inmate to determine if the inmate wants to request the use of a qualified interpreter or an auxiliary aid or service to effectively communicate during the intake process; and
 - (b) If requested by the inmate, arrange for a qualified interpreter or an acceptable auxiliary aid or service to aid in communicating during the pretrial intake process.

F. Intake — Maintaining Correctional Facility.

- (1) As part of orientation at a maintaining correctional facility housing the inmate, an inmate shall be provided with written notification that the inmate may request a qualified interpreter or other auxiliary aid or service for assistance in understanding materials provided.
- (2) If during the inmate's preliminary medical assessment, the inmate announces the presence of or displays signs of being deaf, the inmate shall be assessed, and if necessary tested by qualified

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medical staff to determine if the inmate qualifies as an individual with a disability based on a hearing disability.

- G. An inmate determined to be a qualified individual with a disability based on a hearing disability at intake under §.05E, or at any other time while in the custody of the Department, shall:
- (1) At the earliest possible time after being identified as qualified individual with a disability based on a hearing disability be provided:
 - (a) A list of hearing related auxiliary aids and services available at the facility;
 - (b) Instruction on accessing and use of available auxiliary aids and services available at the facility;
 - (c) A copy of this directive;
 - (d) Deaf Inmate Auxiliary Aids or Services Preference Designations; and
 - (e) The opportunity, using a form approved by the Deputy Secretary for Operations, or a designee, to identify, an auxiliary aid or service preferred by the inmate in order to participate in Department services, programs, and activities in which the inmate would reasonably be expected to participate, voluntarily or mandatorily, during incarceration.
 - (2) If requested by the inmate with a qualified disability based on a hearing disability, provide access to a qualified interpreter or other auxiliary aid or service to assist the inmate in understanding and completing the Deaf Inmate Auxiliary Aids or Services Preference Designations.
- H. The Deaf Inmate Auxiliary Aids or Services Preference Designations identifying the inmate's preferred auxiliary aid or service under §.05G of this directive shall:
- (1) Include, but not be limited to, an auxiliary aid or service for the following circumstances in accordance with 28 C.F.R. §36.104:
 - (a) Medical and mental health care appointments including dental, vision and audiological services;
 - (b) Inmate disciplinary proceedings;
 - (c) Transfer and classification meetings and interviews;
 - (d) Transition programming;
 - (e) Educational programming;
 - (f) Employment programming; and
 - (g) Other programming that requires complex or lengthy communications with staff.
 - (2) Be included in the deaf inmate's case record, including:

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- (a) Electronic case management file (Offender Case Management System (OCMS) as an alert; and
 - (b) Electronic patient health record (EHR).
- (3) Be reviewed by the facility Auxiliary Aides and Services Designee within 24 hours of the deaf inmate's assignment to a unit at a maintaining correctional facility.

I. The facility Auxiliary Aides and Services Designee:

- (1) Shall give primary consideration to the preferred auxiliary aid or service identified by the deaf inmate under §.05G of this directive when determining what is necessary to comply with ADA, Title II; and
- (2) Is not required to honor a deaf inmate's preference for an auxiliary aid or service if the facility Auxiliary Aides and Services Designee demonstrates that:
 - (a) Another effective means of communication exists; or
 - (b) The use of the auxiliary aid or service is not required under 28 C.F.R. §35.164.
- (3) When making a determination under §.05I(2)(a) of this directive, shall consult with the facility's Security Chief, medical staff, and program managers to determine whether the use of the preferred auxiliary aid or service would result in:
 - (a) A fundamental alteration of the Department program or service; or
 - (b) An undue financial or administrative burden for the Department.
- (4) If determining that the circumstances under §.05I(3) of this directive exist, shall:
 - (a) Prepare a written summary of the circumstances that, at a minimum, includes:
 - (i) The inmate's preferred auxiliary aid or service;
 - (ii) Justification for not honoring the inmate's preferred auxiliary aid or service request; and
 - (iii) A recommendation for resolving the issue in accordance with provisions of ADA, Title II.
 - (b) Forward the summary through the chain of command to the Operations ADA Coordinator with a copy to the Executive Director, Office of Equal Opportunity.

J. Upon receipt of a summary under §.05I(4)(b) of this directive and after consulting with the Executive Director, Office of Equal Opportunity, the Operations ADA Coordinator shall forward the summary to the Assistant Secretary for Programs and Services with a recommendation to:

- (1) Use the alternative auxiliary or service recommended by the facility Auxiliary Aides and Services Designee;

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- (2) Use another auxiliary aid or service; or
- (3) Honor the inmate's request for a preferred auxiliary aid or service.

K. On behalf of the Secretary of Public Safety and Correctional Services (Secretary), the Assistant Secretary for Programs and Services shall:

- (1) Consider the information provided by the facility Auxiliary Aides and Services Designee under §.05J of this directive:
- (2) If necessary, consult with the Director of Finance, or a designee, and other management officials to determine the impact of the request on resources available for funding and operation of Department services, programs, and activities; and
- (3) Prepare a written a response for the Operations ADA Coordinator and facility Auxiliary Aides and Services Designee with justification for the decision concerning disposition of the request for a preferred auxiliary aid or service.

L. The Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of Patuxent Institution, or designees, shall facilitate employee awareness of inmates with a hearing disability by developing and offering to an inmate qualified as an individual with a disability based on a hearing disability identification indicating the inmate is deaf.

- (1) A deaf inmate may decline to wear special identification indicating the inmate is deaf by signing a waiver that shall be filed in the inmate's case record.
- (2) A deaf inmate choosing not to wear special identification indicating the inmate is deaf and who has signed a waiver may not be excluded from participation in eligible programs and services based on the deaf inmate's declination to wear special identification.
- (3) During incarceration a deaf inmate initially declining to wear identification indicating the inmate is deaf may request issuance of special identification indicating the inmate is deaf.
- (4) Staff with regular contact with inmates shall be familiar with special identification for a deaf inmate.

M. An inmate:

- (1) Determined to be a qualified individual with a disability based on a hearing disability may request to:
 - (a) Modify a previously submitted request for auxiliary aid or service by adding, changing, or waiving aids or services;
 - (b) Submit an initial request for the use of auxiliary aid or service during incarceration under the Department's authority.
- (2) May not abuse the provisions under this directive for requesting or modifying previously requested use of auxiliary aids or services.

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- (3) Determined by the Department to have abused provisions under this directive for requesting or modifying previously requested use of auxiliary aids or services and whose request was denied may appeal the Department's decision under the Department's Administrative Remedy Procedures.

.06 Attachments/Links.

- A. Deaf Inmate Auxiliary Aids or Services Preference Designations
- B. Link to [Americans with Disabilities Act \(ADA\) 1990 \(Titles I and II\)](#)

.07 History.

This directive supersedes provisions of OPS.200.0004 dated 01/04/16 and any other prior existing Department or unit communication with which it may be in conflict.

.08 Correctional Facility Distribution Code.

- A
- D
- S Facility Auxiliary Aides and Services Designee
- L

Deaf Inmate Auxiliary Aids or Services

Preference Designations

The following Auxiliary Aides and Services for the deaf are available at (Facility Name):

(Managing Official lists aids and services at the facility)

Please indicate your preference for auxiliary aid or service when encountering each of the below listed activities or programs

Medical care and appointments, including dental, vision, audiological and mental health care

Disciplinary hearings _____

Case management interviews and discussions _____

Educational Programs _____

Work Programs _____

Transition/Re-Entry Programs _____

Other programs that require complex or lengthy communication with staff _____

Copy: Facility Auxiliary Aides and Services Designee
Case Record
Medical File