



Secretary's Directive

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|  | Title: Americans with Disabilities Act (ADA) Title II Non-discrimination and Accommodations for Persons with Disabilities | Secretary's Directive Number: DPSCS.200.0007—New |
| | Number of Pages: 19 Number of Appendices: 5 Number of References: 1 | Supersedes: N/A |
| Related Statutes and Regulations: ADA Title II, 42 U.S.C. § 12131-12134 28 Code of Federal Regulations Part 35 Title 20 of the State Government Article, Annotated Code of Maryland COMAR 14.03.02 — Anti-Discrimination Relating to Persons with Disabilities COMAR 12.02.28 — Administrative Remedy Procedures to Resolve Inmate Complaints | | Issued Date: June 4, 2019 Effective Date: June 5, 2019 |
| Related ACA and MCCS Standards: ACA: 2-CO-2A-01; 2-CO-2B-01; 2-CO-3C-01; 2-CO-4B-01; 2-CO-4B-04; 2-CO-4E-01; 4-4142—4144; 4-4169; 4-4277; 4-4429; 4-4429.1; 4-4284; 4-4375; 4-ALDF-6B-01—08; 4-ALDF-5C-06; 1-CORE-6B-01—03; 1-CORE-7E-01; MCCS: .02E; .05; .06; .08D | | |
| Related Directives and Orders: CAP.101.0019 – Division of Capital Construction and Facility Maintenance DPP General Order No. 11-004—Supervising and Monitoring Deaf or Hard-of-Hearing Offenders DOC.100.0002 – DOC Case Management Manual DOC.230.0004 – Inmate Transfers and Housing DPDS.200.0002 – Accommodations for Persons with Disabilities OPS.010.0014 – Office of Clinical Services OPS.110.0047 – Personal Search Protocols—Inmates OPS.185.0002 – Administrative Remedy Procedure OPS.200.0004 – Policy Statement – Inmates with a Hearing Disability OPS.220.0004 – Inmate Personal Property OTS.124.0001 – DPSCS Medical Evaluation Manual OTS.124.0002 – DPSCS Social Work Services Manual 180 Series – Inmate Grievances (Published but organizationally obsolete) | |  Robert L. Green Secretary |
| Variance: Each Unit of the Department shall issue an agency directive or general order to implement the specific procedures related to this policy. | | |

.01 Purpose.

The purpose of this directive is to establish and maintain policy and procedures ensuring that qualified individuals with disabilities, including inmates in the custody of the Department of Public

Safety and Correctional Services (Department), individuals under the supervision of the Department's Division of Parole and Probation, and volunteers, visitors, or other members of the public will not be discriminated against on the basis of disability, as prohibited by the Americans with Disabilities Act, with regard to facility access, services, programs, and activities provided by the Department.

.02 Scope.

- A. This directive is applicable to all units of the Department.
- B. This directive does not apply to job application procedures; the hiring, promotion, or discharge of employees; employee compensation; job training; or any of the other terms, conditions, or privileges of employment.

.03 Policy.

- A. The Department shall comply with the Americans with Disabilities Act (ADA) by:
 - (1) Not excluding any qualified individual with a disability, on the basis of disability, from access to the facilities and participation in the services, programs, or activities of the Department, or subject any individual with a disability to discrimination on the basis of disability.
 - (2) Making reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Department determines that making the modification would:
 - (a) Fundamentally alter the nature of the service, program, or activity;
 - (b) Pose a direct threat of substantial harm to the health and safety to the:
 - (i) Individual requesting the accommodation;
 - (ii) Inmates, supervisees, employees, visitors, or other individuals; or
 - (iii) Physical structure of the building; or

- (c) Result in undue financial and administrative burdens.
- (3) Not retaliating or discriminating against any individual because that individual has opposed any act or practice made unlawful by this policy, or because that individual made a complaint of discrimination or request for accommodation, testified, assisted, or participated in any manner in an investigation of a complaint filed pursuant to this policy.

B. Notice of Policy.

The Department shall:

- (1) Make this policy available to inmates, supervisees, visitors, and any other individual who seeks access to a public accommodation or to participate in any service, program, or activity offered by the Department:
 - (a) By promoting the policy through videos, posters, handouts, and handbooks; and
 - (b) By maintaining a copy of the policy in the inmate library of each facility, providing a copy to inmates or supervisees who after initial screening or intake have been assessed as disabled, and maintaining a copy on the Department's public website; and
- (2) Ensure that this policy and any associated promotional materials are made available in formats accessible to individuals with disabilities.

C. Each Unit of the Department shall:

- (1) Adopt and maintain a policy, authorized by the Department ADA Title II Coordinator, that establishes the standard operating procedures necessary for employees, contractors, interns, and volunteers to comply with this Secretary's Directive; and
- (2) Provide for the assignment of appropriately trained individuals to assist disabled individuals gain equal access to the Department's facilities, services, programs, and activities.

.04 Definitions.

- A.** In this directive, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "American with Disabilities Act" or "ADA":
 - (a) The ADA is federal legislation enacted by the United States Congress in 1990 that prohibits discrimination against people with disabilities.
 - (b) The ADA makes it illegal to discriminate against a person on the basis of a disability in employment, access to transportation, public accommodations, communications, and government activities.
 - (c) Title II of the ADA applies to the services, programs, and activities provided by State and local governments.
- (2) "Auxiliary aids and services" has the meaning stated in 28 C.F.R. § 35.104.
- (3) "Correctional facility" has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
- (4) "Direct threat" has the meaning stated in 28 C.F.R. § 35.104.
- (5) "Disability" means an individual with:
 - (a) A physical or mental impairment that substantially limits one or more major life activities of the individual;
 - (b) A record of such an impairment; or
 - (c) Regarded as having such an impairment as described in 28 C.F.R. § 35.108
- (6) "Disability coordinator" means a full-time Department employee assigned by a managing official or DPP regional administrator to coordinate a correctional facility or region's activities and responsibilities under the ADA Title II.
- (7) "Discrimination" has the meaning stated in the ADA, 42 U.S.C. § 12112(a) and (b).
- (8) "Inmate" has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.

- (9) "Major life activities" has the meaning stated in 28 C.F.R. § 35.108.
- (10) "Managing official" has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
- (11) "Qualified individual with a disability" has the meaning stated in 28 C.F.R. § 35.104.
- (12) "Regional Administrator" means the individual responsible for the management of all DPP offices within a Division of Parole and Probation region.
- (13) "Retaliation" has the meaning stated in 28 C.F.R. § 35.134.
- (14) "Supervisee" means an individual who is on parole, probation, mandatory supervision, or under lifetime supervision and who is not an inmate.
- (15) "Unit head" means the appointed and authorized individual of a Unit of the Department authorized to provide oversight for and issue a decision regarding an inmate's, supervisee's, or other individual's complaint, grievance, or administrative remedy procedure request.
- (16) "Unit of the Department" has the meaning stated in Correctional Services Article, § 2-201, Annotated Code of Maryland.
- (17) "Wheelchair or other power-driven mobility device" have the meanings stated in 28 C.F.R. § 35.104.

.05 Responsibilities.

A. Department ADA Title II Coordinator.

- (1) The Department shall designate a Department-wide ADA Title II Coordinator, who shall:
 - (a) Report directly to the Secretary;
 - (b) Be employed full-time in the service of coordinating the Department's efforts to comply with and carry out its responsibilities under the ADA Title II, including:

- (i) Oversight of any administrative remedy procedure (ARP) requests, inmate grievances, or investigations into complaints alleging non-compliance with the ADA Title II or Departmental policy related to compliance with ADA Title II; and
 - (ii) Approval of any final denial of a request for accommodation under this policy or any other Department policy; and
 - (c) Provide oversight to the correctional facility and DPP regional disability coordinators.
- (2) The Department ADA Title II Coordinator shall be responsible for:
- (a) Making available to all inmates, supervisees, employees, volunteers, and visitors the name of the Department's ADA Title II Coordinator, as well as that individual's office address, email, and telephone number.
 - (b) Ensuring that qualified individuals with a disability who are located within DPSCS correctional facilities, supervised by the Division of Parole and Probation (DPP), or any other individual who otherwise qualifies to participate in the Department's services, programs or activities, have an equal opportunity to participate in such activities;
 - (c) Directing, planning, developing, implementing, and coordinating the needs of the Department relating to implementation and compliance with Title II of the Americans with Disabilities Act;
 - (d) Developing, implementing, and monitoring all Departmental policies and procedures for the:
 - (i) Identification and resolution of issues of discrimination, unequal access, and retaliation; and
 - (ii) Collection of statistical data regarding accommodations made on behalf of inmates, supervisees, and other qualified individuals with disabilities;
 - (e) Overseeing the coordination of auxiliary aids and services for inmates, supervisees, and other qualified individuals with disabilities; and

- (f) Providing regular training to and consultation with the facility and DPP regional disability coordinators;
- (g) Serving as the ADA Title II Coordinator for any Unit of the Department that does not fall under the authority of the Deputy Secretary of Operations; and
- (h) Serving as the Department's subject matter expert in the area of ADA Title II compliance by continued education, research, and analysis of updates or changes in the law, best practices in the field, and evolving assistive technologies and services.

B. The Deputy Secretaries shall ensure that all:

- (1) Administrative and operational units adopt and maintain policies in accordance with § .07 of this directive.
- (2) Buildings that are newly constructed, leased, owned, or operated by the Department meet the minimum ADA requirements for accessibility by inmates, supervisees, and the public;
- (3) Buildings currently leased, owned, or operated by the Department are, as funds are available, renovated and retrofitted to the maximum extent feasible to provide greater access for Departmental services, program, and activities; and
- (4) Contracts, memorandums of understanding, and other agreements are reviewed to ensure that procured services provide alternatives or are equally available to qualified individuals with disabilities.
- (5) Designated employees are properly trained in the Department's obligations under this policy and the ADA Title II;
- (6) Inmates with disabilities are transported in a manner that provides for their safety and security;
- (7) Qualified individuals with disabilities in the custody of the Department are housed in the most integrated setting appropriate their needs, and, unless it is appropriate to make an exception, are not:

- (a) Placed in inappropriate security classifications because no accessible cells or beds are available;
 - (b) Placed in designated medical areas unless they are actually receiving medical care or treatment;
 - (c) Placed in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and
 - (d) Deprived of visitation with family members by placing them in distant facilities where they would not otherwise be housed; and
- (8) All qualified individuals with a disability under the supervision of the Division of Parole and Probation are not:
- (a) Assigned to an intake or reporting office that is inaccessible to or unusable by individuals with disabilities;
 - (b) Excluded from participation in, or denied the benefits of, the Department's services, programs, or activities; or
 - (c) Subjected to discrimination.

C. A Managing Official or Regional Administrator shall:

- (1) Ensure that a correctional facility or regional disability coordinator is assigned to each correctional facility and Division of Parole and Probation regional office;
- (2) Ensure that reasonable accommodations are made within the facility or region to provide qualified individuals with a disability with equal access to:
 - (a) An office or correctional facility; and
 - (b) A program, service, or activity.

- (3) Ensure that appropriate steps are taken to ensure that communications with a qualified individual with a disability, are as effective as communications with others by furnishing appropriate auxiliary aids and services necessary to ensure effective communication;
- (4) Provide authorized policies and procedures to correctional facility or regional employees, contractors, interns, and volunteers regarding:
 - (a) The process by which an inmate, supervisee, or other individual makes a request for accommodation under the ADA;
 - (b) The employee's responsibilities to provide a reasonable accommodation; and
 - (c) What constitutes a reasonable accommodation including:
 - (i) Sign language or interpreter services;
 - (ii) An auxiliary aid or service;
 - (iii) Durable medical equipment;
 - (iv) A wheelchair or other mobility device;
 - (v) A prosthesis;
 - (vi) Adapted transportation and mobility vehicles; and
 - (vii) Adapted showers, toilets, and other related personal hygiene needs;
- (5) Upon receipt of a reasonable request for accommodation under this directive:
 - (a) Review the request for accommodation;
 - (b) Consult with the facility or DPP regional disability coordinator; and
 - (c) Render a decision in concert with the Department ADA Title II Coordinator pursuant to § .06 of this directive; and

- (6) If necessary, in evaluating a request for accommodation, consult with a qualified medical professional or other applicable person to determine if the request is reasonable and appropriate for the individual's particular disability or circumstance.

D. Correctional Facility and Division of Parole and Probation (DPP) Regional disability coordinators.

- (1) Each disability coordinator for a correctional facility or region shall be designated by the Managing Official of the correctional facility or the Regional Administrator of the DPP region.
- (2) The role of the correctional facility or DPP regional disability coordinator is to:
 - (a) Ensure proper implementation of this policy and agency policy within the assigned facility or region;
 - (b) Process initial complaints and requests for accommodation submitted by inmates, supervisees, or other individuals pertaining to that correctional facility or region;
 - (c) Make a written recommendation to the managing official or regional administrator on the appropriate resolution; and
 - (d) Serve as the correctional facility's or regional office's liaison with the Department ADA Title II Coordinator on all issues pertaining to ADA Title II compliance.
- (3) A correctional facility or DPP regional disability coordinator shall be responsible for:
 - (a) Coordinating all Department activities required under provisions of ADA Title II at the assigned facility or in the DPP region related to participation in, and physical access to, Department services, programs, and activities by an inmate or supervisee;
 - (b) Coordinating the provision of auxiliary aids and services at the facility or within a DPP region;
 - (c) Ensuring that all need-to-know employees are aware of the presence of inmates and supervisees qualified as individuals with disabilities at the facility or office; and advised of the auxiliary aids and services authorized for each inmate or supervisee;

- (d) Ensuring that employees at an intake/receiving correctional facility or DPP office are notified that an inmate or supervisee qualified as an individual with a disability is being transferred, as well as advised of the auxiliary aids and services that are to be provided;
 - (e) Maintaining records of all complaints and/or request for accommodations submitted to the disability coordinator or any other employee within the disability coordinator's correctional facility or DPP region;
 - (f) Advising the managing official or regional administrator of all issues regarding qualified individuals with a disability needing accommodations at the correctional facility or DPP region;
 - (g) Submitting information reports as directed by the Department ADA Title II Coordinator reflecting any auxiliary aides and services provided at the correctional facility or in a DPP office; and
 - (h) Conducting all follow up activities to ensure compliance with the ADA Title II requirements at the correctional facility or DPP office.
- E.** The Correctional Training Commission and the Department ADA Title II Coordinator shall:
- (1) Adopt and maintain policies in accordance with § .07 of this directive; and
 - (2) Ensure that pre-service and routine in-service training related to working with qualified individuals with a disability are provided to all custody and supervision staff.
- F.** The Department's Office of Inmate Health and Clinical Services shall:
- (1) Adopt and maintain policies in accordance with § .07 of this directive.
 - (2) Ensure that a qualified medical professional:
 - (a) Upon request, referral, or during a routine medical examination evaluates an inmate to determine if the inmate is disabled and ascertain if the disability substantially limits the inmate's ability to engage in a major life activity;

- (b) Provides a written recommendation to custody and case management staff regarding the need for a reasonable accommodation by a qualified individual with a disability; and
- (c) Communicates instructions for a reasonable accommodation directly to a Shift Commander of a correctional facility, or designee, whenever immediate action is required to protect the health or safety of qualified individual with a disability.

.06 Reasonable Accommodation Request and Complaint Procedures.

A. The Department shall adopt and maintain procedures providing for prompt and equitable resolution of:

- (1) Requests for reasonable accommodation for equal access to a facility, service, program, or activity provided or overseen by the Department; and
- (2) Complaints alleging any action that would be prohibited by the ADA Title II as set forth in this directive.

B. Requests for Accommodation.

- (1) An individual who seeks a reasonable accommodation may initiate a request for accommodation with:
 - (a) A correctional facility or DPP regional disability coordinator; or
 - (b) The Department ADA Title II Coordinator.
- (2) An individual may:
 - (a) Use the “Individual Reasonable Accommodation Request (IRAR)” Form (*form # DPSCS.200.0007Ar*) attached as Appendix A to this directive; or
 - (b) In the event of an emergency or exigent circumstance make a verbal or written request to obtain immediate assistance from Departmental employees.
- (3) An individual may obtain a copy of this directive and the IRAR Form from:

- (a) Any Department employee;
 - (b) A facility's inmate library; and
 - (c) The Department's public website.
- (4) Assistance with completion of the "Individual Reasonable Accommodation Request" Form.
- (a) An individual may request assistance with completing the IRAR Form from:
 - (i) An ADA Title II Coordinator;
 - (ii) Private or Department medical providers;
 - (iii) A Case Management Supervisor;
 - (iv) The individual's legal representative;
 - (v) The individual's guardian; or
 - (vi) In the event of an emergency or exigent circumstance, a Department employee not specifically identified in § .06(B)(4)(a) of this directive.
 - (b) An individual receiving assistance with completing the IRAR Form shall indicate on the form:
 - (i) The name and contact information for person providing the assistance;
 - (ii) The person's relationship the individual; and
 - (iii) The date assistance was received.
 - (c) The person assisting with the completion of the IRAR Form shall also sign and date the document.

- (5) Responses to a Request for Reasonable Accommodation.
- (a) A managing official, regional administrator, or unit head may not deny a request for an accommodation without the written approval of the Department ADA Title II Coordinator.
 - (b) Upon receipt of a verbal request for an accommodation by an inmate, supervisee, or other individual, a Department employee shall:
 - (i) Immediately comply with the request if the request is:
 - 1. Reasonable; and
 - 2. Within the employee's authority and ability to provide;
 - (ii) If unable to immediately comply with the accommodation request for any reason:
 - 1. Refer the request to the employee's supervisor and the appropriate disability coordinator before the end of the employee's shift;
 - 2. Inform the individual of the Department's accommodation request procedure and, if requested, provide the individual with the IRAR form attached as Appendix A to this directive; and
 - 3. Document the request for accommodation in a manner appropriate to facility, region, or unit practice.
 - (c) Absent an exceptional circumstance, a managing official, regional administrator, or unit head shall respond to a request for reasonable accommodation within seven (7) calendar days of the date of the individual's submission of the IRAR Form to the appropriate disability coordinator or the Department ADA Title II Coordinator by providing the individual with a written determination:
 - (i) Granting the request;
 - (ii) Denying the request; or

- (iii) Granting the request with a modification.
- (d) A disability coordinator shall contact the individual within 3 business days of receipt of the IRAR Form if an individual's request is delayed due to:
 - (i) Incomplete or unverifiable information provided on the form; or
 - (ii) The need for supporting medical documentation.
- (e) The Department shall utilize the "Response to a Request for Reasonable Accommodation" (RRRA) Form (*form # DPSCS.200.0007Br*) attached as Appendix B to this directive to respond to all requests for reasonable accommodation.
- (f) An individual may choose to either provide supporting documentation with the IRAR Form or authorize a waiver that gives the Department limited access to medical information required for evaluating the request for reasonable accommodation.
- (g) In making the decision to grant the requested accommodation, the Department may consider less costly, but equally effective alternatives methods to provide the individual with reasonable access to a facility, program, service, or activity.
- (h) Reasonable modifications to policies, practices, or procedures shall be made when necessary to avoid discrimination on the basis of disability, unless the managing official, regional administrator, or unit head, with the approval of the Department ADA Title II Coordinator, determines that making the requested modification would fundamentally alter the nature of the facility, program, service, or activity.
- (i) Legitimate safety requirements necessary for the safe and secure operation of the Department's facilities, programs, services, or activities may be imposed. The managing official, regional administrator, or unit head in consultation with the Department ADA Title II Coordinator, must determine that safety requirements are based on actual risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.

- (j) No individual shall be permitted to access a Department facility or office, or participate in a program, service, or activity when that individual poses a direct threat to the health or safety of others.
 - (k) No individual with a disability, with or without an accommodation, shall be allowed to access a Department facility or office, or participate in a program, service, or activity if that individual does not also possess the other qualification(s) required to participate in the program, service, or activity.
- C.** In determining whether an individual poses a direct threat to the health or safety of others, the managing official, regional administrator, or unit head in consultation with Department ADA Title II Coordinator shall make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:
- (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 or the provision of auxiliary aids or services will mitigate the risk.
- D.** Complaint Procedure.
- (1) Each unit of the Department shall comply with the complaint procedure described herein.
 - (2) By using the “Complaint of Discrimination under ADA Title II” Form (*form # DPSCS.200.0007Cr*) attached as Appendix C to this directive, an individual who believes that his or her rights under ADA Title II have been violated may initiate a complaint with the:
 - (a) Department ADA Title II Coordinator;
 - (b) Appropriate facility or DPP regional ADA Title II Coordinator; or
 - (c) Appropriate Unit Head; or

- (3) All complaints, related to alleged discrimination under ADA Title II shall be immediately forwarded to the Department ADA Title II Coordinator.
- (4) The Department ADA Title II Coordinator, or designee, shall investigate the complaint and, within 30 calendar days of receipt, issue a final decision on the complaint using the "Response to Complaint of discrimination under the ADA Title II" Form (*form # DPSCS.200.007Dr*) attached as Appendix D to this directive, and a copy of that decision shall be provided to the complainant or individual requesting an accommodation.

.07 Mandatory Procedures and Duties to be Incorporated into Departmental Policies.

- A.** Consistent with § .03(C) of this directive, each unit of the Department shall adopt and maintain a policy, authorized by the Department ADA Title II Coordinator that establishes the standard operating procedures necessary for employees, contractors, interns, and volunteers to comply with this Secretary's Directive. Each unit's policy shall, at minimum include procedures for:
- (1) Advising an inmate, supervisee, or other individual who is disabled of the right to request a reasonable accommodation;
 - (2) Advising an inmate, supervisee, or other individual who is disabled of the process for requesting a reasonable accommodation;
 - (3) The effective and efficient communication between and among:
 - (a) The Department ADA Title II Coordinator and the disability coordinators;
 - (b) Department employees and the public;
 - (c) Medical, custody, security and administrative staff; and
 - (d) Units of the Department.
 - (4) Properly documenting requests for accommodation and approved accommodations in the Department's electronic systems of record;
 - (5) The annual review of all ongoing and approved reasonable accommodations to determine if the accommodation is still required; and

(6) Record keeping and document retention.

- B.** Each Department employee, contractor, intern, and volunteer shall read and acknowledge the receipt and understanding of this directive using the “Receipt and Acknowledgement of Content in Secretary’s Directive DPSCS.200.0007 - Americans with Disabilities Act (“ADA”) Title II Non-discrimination and Accommodations for Persons with Disabilities” Form (*form # DPSCS.200.007Er*) attached as Appendix E to this directive.
- C.** Department employees who become aware of an individual’s disability or claimed disability may not disclose the individual’s status to other inmates, supervisees, employees, or individuals, except as necessary to carry out the requirements of this and any related Department policy.
- D.** The Department shall establish an annual review process for all policies, procedures, practices, and manuals related to the provision of a disabled individual’s access to Department facilities, services, programs, and activities.

.08 Attachments.

Appendix A — “Individual Reasonable Accommodation Request (IRAR)” Form
(*DPSCS.200.0007Ar*)

Appendix B — “Response to a Request for Reasonable Accommodation” (RRRA) Form
(*DPSCS.200.0007Br*)

Appendix C — “Complaint of Discrimination under ADA Title II” Form (*DPSCS.200.0007Cr*)

Appendix D — “Response to Complaint of Discrimination under the ADA Title II” Form
(*DPSCS.200.007Dr*)

Appendix E — “Receipt and Acknowledgement of Content in Secretary’s Directive DPSCS.200.0007 - Americans with Disabilities Act (“ADA”) Title II Non-discrimination and Accommodations for Persons with Disabilities” Form
(*DPSCS.200.007Er*)

Reference 1 — 28 Code of Federal Regulations §§ 35.104 and .108

.09 Revision History.

- A. This directive was adopted on June 4, 2019 and supersedes provisions of any other prior existing Departmental policy or communication with which it may be in conflict.

.10 Distribution.

All DPSCS employees, contractors, interns, and volunteers

A – Facility and Office Reference Copy

L – Inmate Library