

# JURORS WITH DISABILITIES



*A discussion of  
the Americans with  
Disabilities Act and other  
statutory requirements  
requiring accommodations for  
the disabled, and practical  
information to be compliant.*

# MISSION

## THE NATIONAL CENTER FOR STATE COURTS

*To promote the rule of law and to improve  
the administration of justice in the  
state courts and courts around the world.*

### ABOUT THE AUTHORS

Deborah Smith is a Senior Knowledge and Information Services Analyst with the National Center for State Courts. She has been with the Center for nine years. She has practiced in the areas of criminal law and disability law. She spent several years as an Assistant Public Defender on the Juvenile and Domestic Relations team representing juveniles and adults. Previously, she worked with parents of children with disabilities in the school setting.

Greg Hurley received a B.A. in Russian Studies from the University of Connecticut in 1991. In 1996 he was awarded a J.D. from Widener University in Harrisburg, Pennsylvania. From 1996–2007, he practiced law in the state of West Virginia in the area of criminal defense. He joined the National Center for State Courts in September of 2007 and specializes in criminal justice issues.

Copyright 2018  
National Center for State Courts  
300 Newport Avenue  
Williamsburg, VA 23185-4147  
ISBN 978-0-89656-309-4

This document has been prepared with support from a State Justice Institute grant. The points of view and opinions offered in this document are those of the authors and do not necessarily represent the official position or policies of the National Center for State Courts or the State Justice Institute.

# T A B L E O F C O N T E N T S

- 
- 4 INTRODUCTION
  - 5 THE AMERICANS WITH DISABILITIES ACT, THE REHABILITATION ACT,  
AND THE ARCHITECTURAL BARRIERS ACT APPLY TO STATE AND LOCAL COURTS
  - 6 WHO IS COVERED BY THE AMERICANS WITH DISABILITIES ACT
  - 7 CONDITIONS THAT ARE SPECIFICALLY EXCLUDED UNDER THE ADA
  - 8 ENFORCEMENT
  - 8 SERVICE ANIMALS
  - 9 AVOID BEING SUED IF AT ALL POSSIBLE
  - 10 SURVEY OF ADA POLICIES AND PROCEDURES
  - 10-14 FIGURE A  
FIGURE B  
FIGURE C  
FIGURE D  
FIGURE E
  - 15 MANUALS, BROCHURES, OR GUIDELINES
  - 16 EARLY CASES WITH DISABLED JURORS SERVING
  - 18 HIDDEN AND UNINTENDED BARRIERS TO JURY SERVICE
  - 19 DEVELOPING TECHNOLOGIES
  - 19 INTERVIEWS
  - 20 THE BEST PROGRAMS ARE PROACTIVE
  - 21 A SYSTEMIC APPROACH TO ACCOMMODATIONS IS THE BEST APPROACH
  - 21 TRAINING AND ONGOING PATHWAYS FOR ASSISTANCE
  - 22 DO NOT DENY REQUESTS UNLESS THERE IS AN  
EXTREMELY GOOD REASON FOR DOING SO
  - 23 BE AWARE OF THE AVAILABLE ASSISTIVE DEVICES
    - BLINDNESS OR LOW VISION
    - HEARING IMPAIRED
    - OTHER IMPAIRMENTS
    - PHYSICAL STRUCTURES
  - 24 ADVICE FOR RURAL OR SMALLER JURISDICTIONS
  - 25 CONCLUSION

# COURTS AND DISABILITIES TIMELINE

## 1973-2017

- 2
- 1973** Section 504 of the Rehabilitation Act Banned discrimination by organizations receiving federal aid
- 1977** The White House Conference on Handicapped Individuals, volume 2: “Final Report, Part C” (signers should be provided so deaf can sit on juries)
- 1979** *Washington State v. Scalese*, Criminal Cause No. 90771, Peter M. Steele, J. The first deaf person in the country sat on a criminal case, according to *Guzman*.
- 1984** *People v. Guzman*, 478 N.Y.S. 2d 455 (N.Y. Sup. Ct. 1984), aff’d, 76 N.Y. 2d 1, 555 N.E. 2d 259 (1990). (See page 10)
- 1985** *State v. Spivey*, 700 S.W.2d 812 (Mo. 1985) (en banc). Missouri Supreme Court. “We sympathize with the desire of the deaf to participate in the mainstream of American life. We simply recognize the problems of their serving on juries, and hold that their exclusion, if established does not violate the constitutional rights of a defendant.”
- 1990** ADA signed into law
- 1991** *Kroll v. St. Charles County*, 766 F. Supp. 744 (D. Mo. 1991). “No sign language interpreters are employed or available at the courthouse to assist individuals with hearing impairments who were a party in a case, witness at a trial, juror, attorney, or individual seeking information from one of the court personnel. The Courthouse, the Government Building and the Administration Building will be in violation of the Americans with Disabilities Act, when the Act becomes effective.”
- 1993** *Galloway v. Superior Court of District of Columbia*, 816 F. Supp. 12 (D.D.C. 1993). Categorical exclusion of blind persons from jury service banned and allowed to seek compensatory damages.
- 1995** Arkansas was sued for not permitting jurors with hearing impairments. Act 897 was approved to end the federal lawsuit.
- 2004** *Tennessee v. Lane*, 541 U.S. 509 (2004). The ADA does not violate the 11th Amendment’s Sovereign Amendment Clause by allowing aggrieved disabled persons to sue state entities.
- 2008** ADA Amendments Act
- 2010** *State v. Speer*, 124 Ohio St. 3d 564, 2010-Ohio-649, 925 N.E.2d 584. In *State v. Speer*, the Supreme Court of Ohio considered whether a defendant’s right to a fair trial outweighed a hearing -disabled citizen’s right to serve on a jury and have access to the courts. The court reiterated that in the interest of providing equal access to the courts, an individual with a disability should never be excused from a jury for reason of disability alone. However, the court held that “[a] hearing impairment by itself does not render a prospective juror incompetent to serve on a jury, but when the accommodation afforded by the court fails to enable the juror to perceive and evaluate the evidence,” the juror cannot serve without violating the defendant’s due-process rights.
- 2011** ADA Title II regulations
- 2016** 12 deaf lawyers admitted to SCOTUS
- 2017** *Dixon v. Rackley*, No. 1:14-cv-01149 AWI MJS (HC), 2017 WL 1380547 (E.D. Cal. Apr. 17, 2017). *Batson* challenge.



# JURORS WITH DISABILITIES

## INTRODUCTION

4

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The ADA is an “equal opportunity” law for people with disabilities and was generally modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin, and Section 504 of the Rehabilitation Act of 1973. It was amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008, which was signed into law on September 25, 2008, and became effective on January 1, 2009. The Amendments Act significantly expanded the definition of “disability” under the Act, which both increased the actual number of people who are covered by the Act and signaled Congress’s intent to ensure that people with a broad range of disabilities are treated equally and fairly. Two other federal statutes will be discussed in this booklet: the Rehabilitation Act of 1973 and the Architectural Barriers Act. It is also important to note that some states have their own statutes in this area of the law that may give disabled persons some additional protections.

The U.S. Census Bureau reported in their 2016 American Community Survey that more than 40 million Americans have some type of disability, representing nearly 13% of the population. Their information demonstrates that the percentage of the population increases by age groups. Nearly 50% of the population over the age of 75 has a disability. And while not every disability identified in the American Community Survey would be classified as a disability under the amended version of the ADA, most likely would. For the purposes of federal, state and municipal judiciaries in the United States, this obviously means that many

employees, litigants, witnesses, spectators, jurors, etc., that have contact with the court system have a qualifying disability under the Americans with Disabilities Act.

Due to the complexity of the Americans with Disabilities Act, other federal and state statutory disability requirements, the wide array of disabilities that manifest themselves in the population, and the rapidly changing technological advances to accommodate disabled persons, it is not surprising that there is confusion among the court community as to how to be fully compliant with the statute. This booklet is designed to provide jury managers with the key considerations in handling a person’s request for an accommodation and protection under the ADA and other disability statutes. This booklet will demonstrate that these statutes are applicable to jury service, that in the vast majority of situations disabled persons can be accommodated, and that it can be done without fundamentally altering jury service. Further, it will also demonstrate that well-run court systems anticipate requests from disabled persons and find that their participation is beneficial to ensuring jury panels are a fair cross section of the community and to improving the quality of justice that juries deliver daily in our nation’s courtrooms. Although this booklet is addressed to jury managers, most of the information contained within will apply to all aspects of court operations. This booklet focuses on the Americans with Disabilities Act and other federal legislation, but jury managers should be aware that their states may have statutes that afford disabled persons with even greater protections.

# THE AMERICANS WITH DISABILITIES ACT, THE REHABILITATION ACT, AND THE ARCHITECTURAL BARRIERS ACT APPLY TO STATE AND LOCAL COURTS

Title II of the Americans with Disabilities Act applies to state and local governments, including courts. It applies regardless of whether the entity receives any federal funding and regardless of the size of the entity. It requires that state and local governments provide people with disabilities an equal opportunity to benefit from all the programs and services offered. For jury service, people with disabilities must be afforded the opportunity to participate in all the same ways as their nondisabled fellow citizens. Summarily removing them from service or fundamentally altering the nature of their service is a violation of the Americans with Disabilities Act. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities by any program or activity receiving federal financial assistance. For jury service, it may not always be applicable.

Additionally, the Architectural Barriers Act, 42 U.S.C. sec. 4151-4156 places requirements on state and local governments to include the courts. For new construction of courthouses, courtrooms, and even jury boxes, deliberation rooms, and assembly areas, there are architectural standards that must be followed. Questions regarding the specifics of being compliant with these regulations would be best addressed to an architect familiar with this type of work or an attorney skilled in construction law. However, the *2010 ADA Standards for Accessible Design* is available online and does address jury boxes specifically.<sup>1</sup> For accessibility issues in older buildings, the court must make reasonable and necessary modifications. To accommodate a disabled juror, this may mean moving the trial to a more accessible courtroom or making a structural modification to an existing courtroom. However, by planning

ahead and anticipating requests, some accessibility issues can be addressed before a request for an accommodation is received. For example, many courts have installed assistive hearing devices and bariatric seating directly into their jury boxes.

The DOJ has made a concerted effort to work with state and local government entities, including courts, under *Project Civic Access*. The document *Cities and Counties: First Steps Toward Solving Common ADA Problems* provides a section on “Common Problems with Courtrooms.”<sup>2</sup> Documented problems include:

- Doors are too heavy to open.
- No assistive listening systems are provided for people who are hard of hearing.
- Fixed seats or benches for courtroom spectators are positioned to leave little room for people who use wheelchairs; wheelchair placement in aisles can violate fire codes.
- Jury toilet rooms are not accessible.
- Jury boxes and witness stands can only be accessed by climbing a step.

# WHO IS COVERED BY THE AMERICANS WITH DISABILITIES ACT

The ADA, in 42 USC sec 12102(2), states that an individual is disabled if she or he:<sup>3</sup>

- has a physical or mental impairment that substantially limits one or more of the individual's major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

However, this alone is insufficient to determine if a person is covered by the statute. The Code of Federal Regulations provides some additional guidance by defining terms used in the statute. The Code states that an impairment must "substantially" limit one or more of life's major activities.

1. Physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 29 C.F.R. sec. 1630.2(h) (1) and (2).

2. Major life activities include, but are not limited to: Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.
3. Substantially limits means the condition limits the ability of an individual to perform a major life activity as compared to most people in the general population.





# CONDITIONS THAT ARE SPECIFICALLY EXCLUDED UNDER THE ADA

The following conditions are specifically excluded from coverage both by the ADA and the Rehabilitation Act.

- Homosexuality
- Bisexuality
- Transvestism
- Transsexualism
- Pedophilia
- Exhibitionism
- Voyeurism
- Gender-identity issues  
(not connected to other physical issues)
- Other sexual disorders
- Gambling addiction
- Kleptomania
- Pyromania
- Illicit drug use disorders

Whether alcoholism is covered by the ADA is a tricky determination. Alcoholics are considered persons with a disability under the ADA but may be held to the same standards as other people while accessing a program. For jury service, this means that they can be required to appear for service sober. Active illicit drug users are not covered. However, both alcoholics and drug addicts that are participating in a supervised program of rehabilitation are covered. Additionally, a normal pregnancy is not a condition covered by the ADA. However, if there are complications to the pregnancy, the resulting condition may be covered, so special care should be taken when evaluating these requests.



## ENFORCEMENT

Aggrieved disabled persons have several avenues available to them if they feel they have been unlawfully discriminated against. They can file a complaint with the U.S. Department of Justice (DOJ) within 180 days of the date of the alleged discrimination. The DOJ has an easy-to-navigate website explaining the process, and they accept filing via an online portal, U.S. Mail, or fax.<sup>5</sup> The DOJ will investigate complaints and may try to resolve them without litigation. However, they reserve the right to bring an action in federal court on behalf of the aggrieved person. Additionally, Title II of the ADA may be enforced through private litigation filed by the aggrieved party. It is not necessary for the aggrieved party to obtain a “right to sue” letter before filing an action.

It is important for jury managers and court clerks to recognize that aggrieved disabled litigants have multiple avenues to take legal action. In making the decision regarding whether a specific accommodation is a “reasonable accommodation” or deciding whether a programmatic alteration is a “fundamental alteration” as defined by the ADA, one must recognize that a decision adverse to the disabled person may need to be justified in a formal setting later. Therefore, adverse decisions should be well documented, and the reasoning behind the decision should be clearly stated. It is also obvious that whenever possible a disabled person should be accommodated even when there may be a legally defensible reason for not doing so.

## SERVICE ANIMALS

Under Title II of the Americans with Disabilities Act (ADA), service animals must be permitted, but not emotional support, comfort, or therapy animals. Most states also have their own regulations that apply to service animals, so while the ADA does not cover a service dog in training, the state or local law may be broader. The state regulations cannot place limits on the ADA regulations. Emotional support animals are permitted under the broader definitions in the areas of housing and transportation. Under the ADA, service animals are defined as any dog that is trained to perform tasks to benefit the person with the disability. Although only dogs are included under the

definition, a special provision makes an exception for miniature horses in certain cases. According to the commentary that accompanies the regulations, miniature horses are not much larger than certain breeds of dogs, live much longer, are strong enough to pull a wheelchair, and may be used by individuals with allergies to dogs. When someone enters a courthouse with a possible service animal, court staff may only ask two questions:

1. Is the animal necessary because of a disability?
2. What has the animal been trained to do to assist the individual?<sup>4</sup>

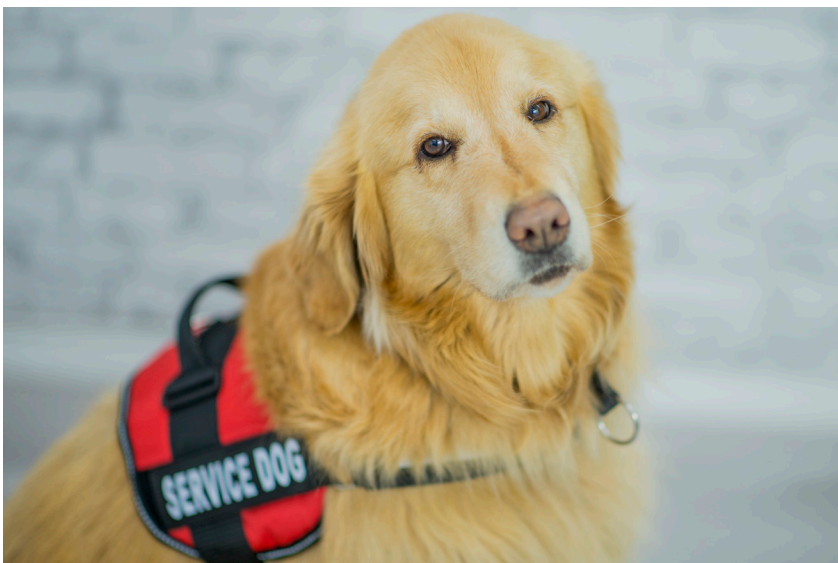
## AVOID BEING SUED IF AT ALL POSSIBLE

On August 22, 2014, a deaf person named Michelle Koplitz filed in the United States District Court for the District of Columbia. She was summoned to serve on a grand jury and notified the Superior Court of the District of Columbia that she was deaf and required an ASL interpreter to participate. She claimed that an unnamed person in the jury services office converted her service from grand jury to petit jury over her objection. This action was done to reduce the costs of providing an ASL interpreter, as grand-jury service is for a much longer time frame than a typical trial jury.<sup>6</sup> Ms. Koplitz sued the court under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-65; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504); and the D.C. Human Rights Act, D.C. Code § 2-1402.31, for refusing to allow her to participate in grand-jury service and converting the nature of her service.

This case attracted a significant amount of interest from the regional and national media, perhaps in part because Ms. Koplitz was an attorney. The case settled in a matter of days following the lawsuit being filed. On September 19, 2014,

Chief Judge Lee F. Satterfield wrote Ms. Koplitz a letter. It stated in part, “It is with profound regret that I learned only after the fact that because of interpreting issues your jury service was changed from service on the grand jury to service on a petit jury.” He goes on to state that the situation was an error and it had been the policy for many years to provide all citizens the ability to perform grand- and petit-jury service.

There are a few significant lessons that can be learned from this case, although it has no precedential value because it was settled. First, if the media take an interest in the disparate treatment of a disabled person it could very quickly be embarrassing for the court. Second, even a well-intentioned mistake by a jury manager or court clerk in the handling of a disabled juror could lead to a lawsuit. There are many groups that disabled people can justifiably turn to for legal assistance in these situations. Finally, no court employee should ever make a decision that may require their chief or presiding judge to issue an apology. It is, therefore, much safer to always err on the side of accommodating people.



# SURVEY OF ADA POLICIES AND PROCEDURES

In 2015 NCSC surveyed the 50 state courts and the District of Columbia to review ADA policies and procedures. Keeping in mind that this information may have changed since 2015, 22 of the 33 responding states (67%) reported a centralized administration or management of ADA issues. Twenty-four (68%) had a statewide judicial-

branch ADA coordinator. Forty-eight percent of the responding states had both a statewide coordinator and local coordinators (17 states). The nine states that did not have a statewide coordinator either used local coordinators or left it up to the individual local court to process requests.

FIGURE A

Centralized Administration for ADA Issues

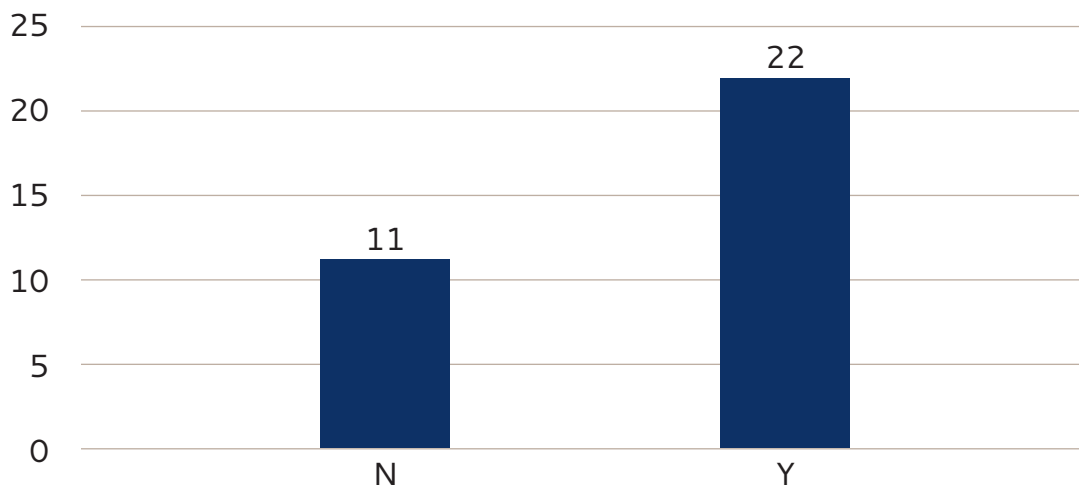


FIGURE B

Statewide Judicial Branch ADA Coordinator

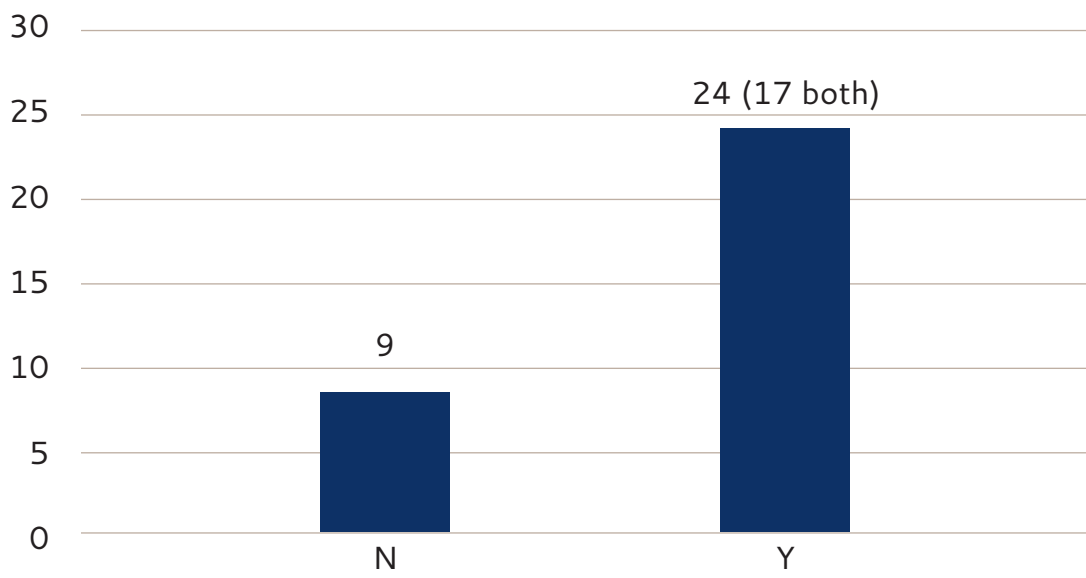
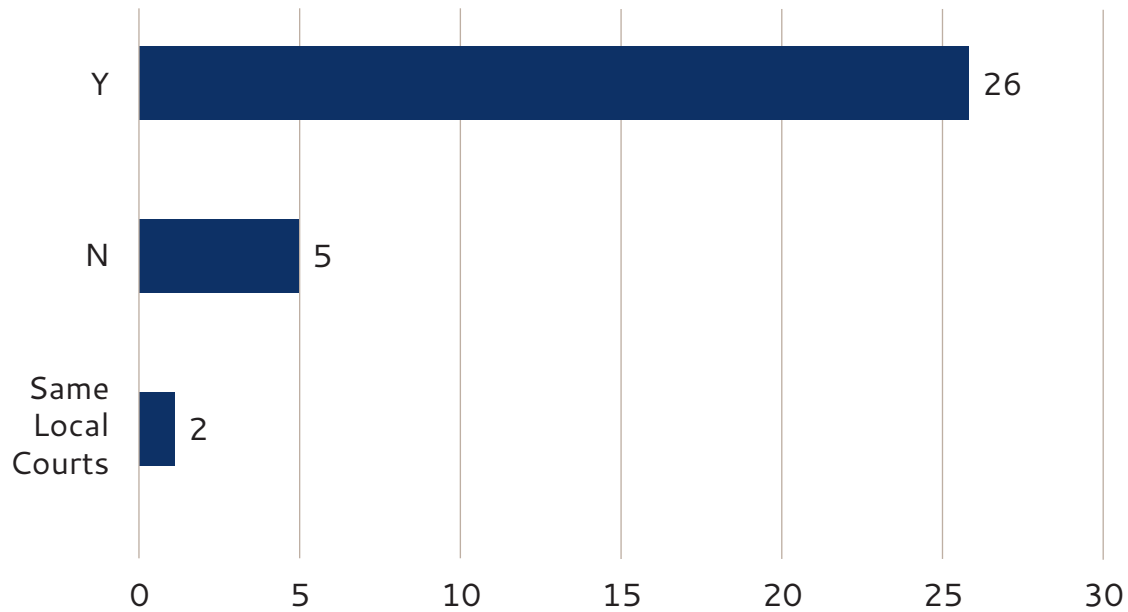


FIGURE C

### Website Contains Information on Requesting Accommodation



Most states provide information on the judicial-branch website about the ADA and about how to request an accommodation (26 out of 33 states — 78%). Two states also reported information on some local-court websites on requesting an accommodation. Over half the states provided information on their websites on available accommodations and on how to file a complaint

or grievance if the accommodation request was denied. Fewer states linked to other resources on their ADA websites. Twenty-four states (68%) reported having information on their judicial-branch websites on filing a complaint or grievance when the accommodation is not provided (one did not know, and one indicated that some local courts had the information).

FIGURE D

Website Contains Information on Filing Complaint

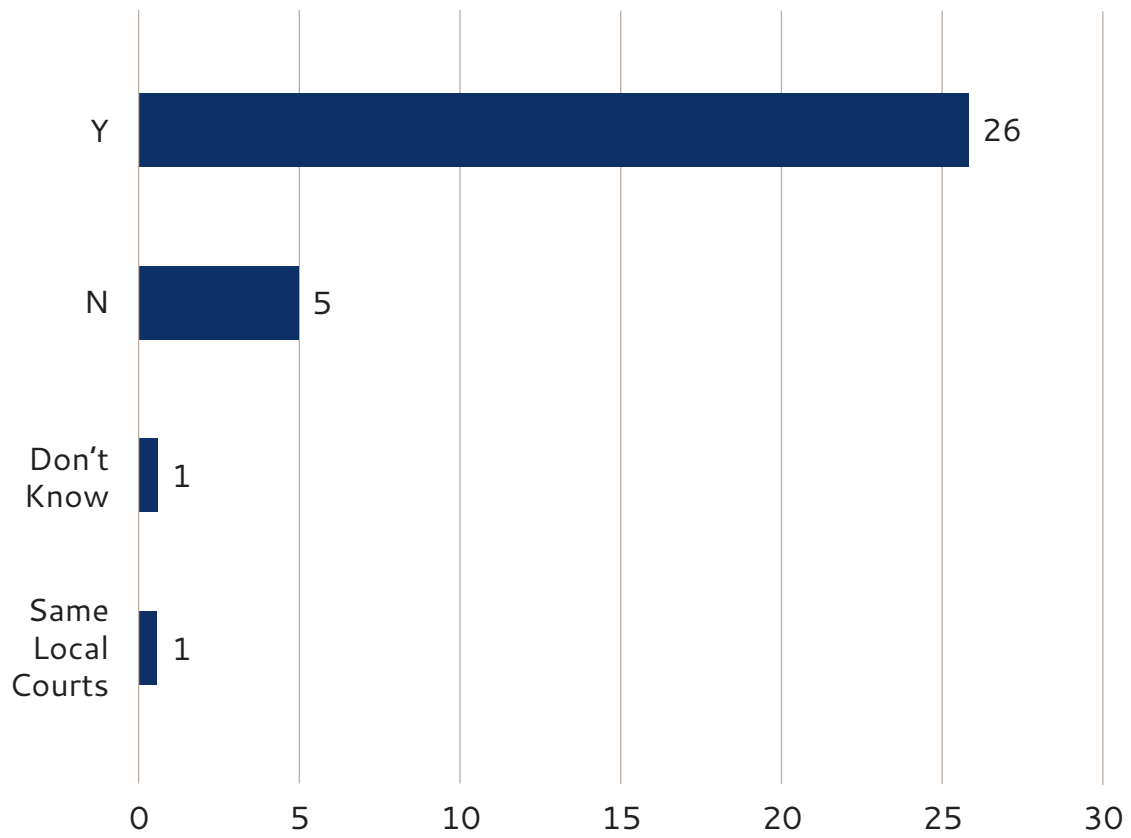
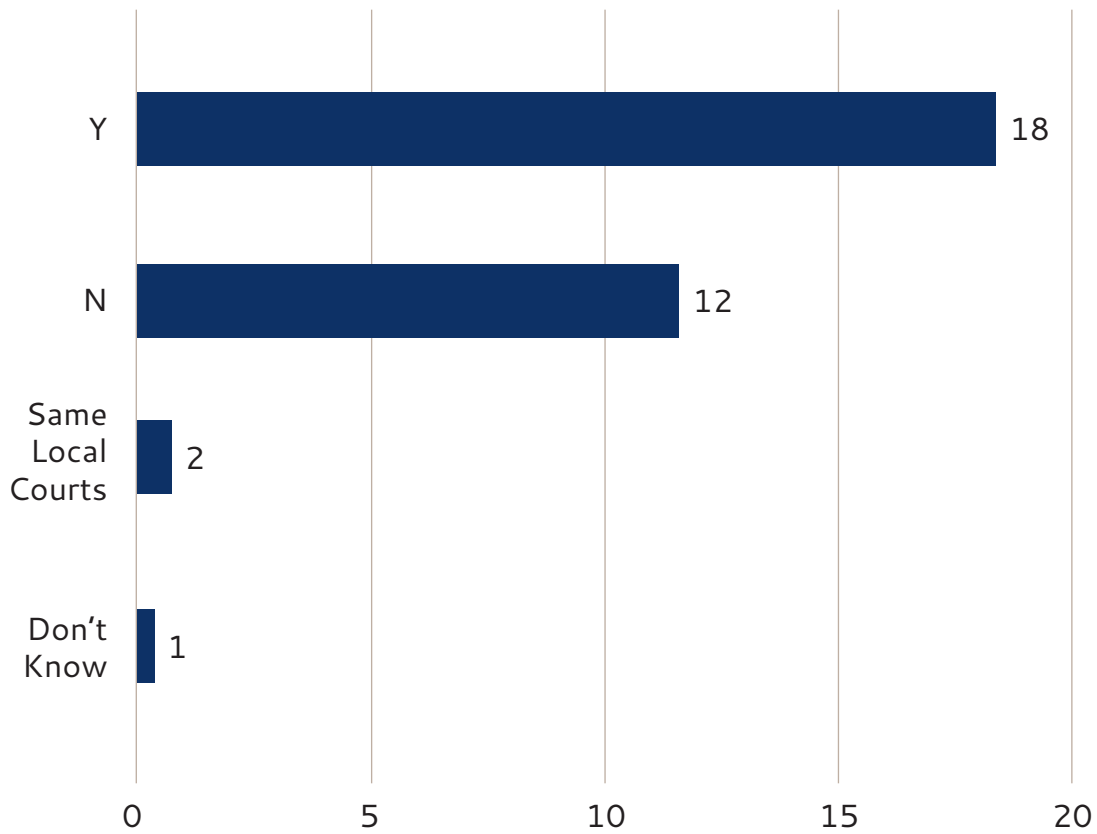


FIGURE D

Website Provides Information on Accommodations That May be Available



14

When asked if their websites provided information on what accommodations are available, 18 (51%) reported yes and 12 (34%) reported no. States were asked if they linked to other ADA resources

on their websites. Eleven states (31%) answered yes, 18 states (51%) answered no, three states did not know, and one state indicated that some local courts linked to additional resources.



# MANUALS, BROCHURES, OR GUIDELINES

Some states have produced manuals, brochures, or guidelines that are available on their websites. Some of these materials specifically address jurors with disabilities, and these sources are worth noting as they could be used as a template to develop tools in any state. Examples include:

- *Responding to Requests for Accommodations by Persons with Disabilities* (2007). San Francisco: Judicial Council of California.
- *A Meaningful Opportunity to Participate: A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with a Disability* (2017).

This position statement is hereby adopted to ensure equal access to and full participation in court and programs conducted by the court by people with disabilities, including but not limited to litigants, defendants, witnesses, victims, jurors, potential jurors, and attorneys. This statement is an effort towards compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2012) and should be construed in a manner consistent with and in furtherance of that Act.

- *Opening the Bench and Bar to People with Disabilities: Manual for Court Disability Coordinators*. (2005). Chicago: Office of the Illinois Attorney General.

This includes witnesses, attorneys, jurors, judges, litigants and spectators.

- *Ensuring Equal Access for People with Disabilities — A Guide for Washington Courts* (August 2006). Washington State Access to Justice Board.

“Applicant” means any lawyer, party, witness, juror, or any other individual who has a specific interest in or is participating in any proceeding before any court.

- The Florida Court website is a good example of a state court system that is trying to be transparent and providing information to both the public and staff. It includes a variety of materials providing extensive information on the ADA and the courts, including guidelines for judicial officers and courthouse personnel on Title II. This document provides a list of aids or services that the court is not required to provide:

- i. Transportation to the courthouse
- ii. Legal counsel or advice
- iii. Personal devices such as wheelchairs, hearing aids, or prescription eyeglasses
- iv. Personal services such as medical or attendant care
- v. Readers for personal use or study

## EARLY CASES WITH DISABLED JURORS SERVING

The earliest known case to mention seating jurors with hearing or visual impairments came from Washington State in 1979 (*State v. Scalese*, Criminal Cause No. 90771). A 1984 New York case, *People v. Guzman*,<sup>7</sup> cited a list of other instances where people with disabilities had been seated on juries:

1. California “It just seemed very natural,” said Los Angeles Municipal Court Judge Marion Obera who seated the deaf juror under California’s recently enacted statute (The Silent News, April, 1981). She observed that neither the deaf person nor his interpreter interfered with or delayed the proceeding. The Deputy Public Defender said that she did not slow or direct the testimony to that juror.
2. Maryland (June 21, 1982) Juror in Montgomery County Circuit Court used an oral interpreter; the interpreter mouthed the words at a normal rate of speed.
3. Colorado (*Gazette Telegraph*, 1982) Fourth Judicial District Judge Joe Cannon. The juror was seated under Colorado’s new legislation which says that “[n]o person shall be deemed to be incapable of jury service solely because of impaired vision or hearing in any degree.”
4. Oregon (*Washington Post*, Oct. 22, 1983) Portland, Multnomah County Circuit Court.
5. Texas Judge Randell Riley stated in conversation with my law clerk that after the novelty of the presence of an interpreter wore off, there was absolutely no problem, no disruption at all in court or during deliberations. He instructed the interpreter “to make no comment of her own about the case but to repeat only that which was being said by the deliberating jurors.”
6. Florida (*St. Augustine Record*, June 19, 1982) Circuit Court Judge Richard O. Watson referred to jury service as a “basic right” during an interview, with respect to the seating of a deaf woman on the Grand Jury under the Florida statute which prohibits discrimination based on race, religion or physical handicap.
7. Washington (*Seattle Post Intelligencer*, Aug. 20, 1979, p 5; *State v. Scalese*, Criminal Cause No. 90771, Peter M. Steele, J.) The first deaf person in the country sat on a criminal case. The Judge stated in a phone conversation on March 15, 1984 that the presence of the signer had presented no problem either during the proceedings or during deliberations. Defense attorney said after the trial that he had been sure from the beginning that the deaf person could be a fair and capable juror. His client was acquitted. The parties stipulated to the presence of the interpreter in the jury room. (GCEH Newsletter, Sept., 1979, deaf jurors have served in both civil and criminal

cases as have the blind.) In the *O'Brien* case (Washington State) it was reported that the jury decided that when anyone spoke, that person would raise his (her) hand so that Mr. O'Brien would know who the ideas were coming from.

8. Illinois (*Chicago Tribune*, March 13, 1982, p 22) Judge Edward Hofert, Circuit Court, the deaf juror was seated over the objections of the defense attorney (civil case).

The *Guzman* opinion also pointed out that there was nothing new about having one person speak at a time to be sure that everyone heard what was being said and that a complete and accurate record was made. The court pointed out that individuals not identified as deaf or hearing impaired could also miss words in certain situations. But in 1985 the Missouri Supreme Court held that:

We sympathize with the desire of the deaf to participate in the mainstream of American life. We simply recognize the problems of their serving on juries, and hold that their exclusion, if established, does not violate the constitutional rights of a defendant. *State v. Spivey*, 700 S.W.2d812, (Mo. 1985) (en banc).

The passage of the ADA and a gradual change in attitudes toward individuals with disabilities is apparent in the caselaw of the 1990s. In *Kroll v. St. Charles County*, the District Court for the

Eastern District of Missouri concluded that the courthouse and other government buildings would be in violation of the ADA when the law became effective because, in addition to multiple facility issues:

[n]o sign language interpreters are employed or available at the courthouse to assist individuals with hearing impairments who were a party in a case, witness at a trial, juror, attorney, or individual seeking information from one of the court personnel. *Kroll v. St. Charles County*, 766 F. Supp. 744 (D. Mo. 1991).

In 1993 the Superior Court of the District of Columbia was barred from categorically excluding blind jurors, and the plaintiff was allowed to seek compensatory damages under both the ADA and Section 504. Typically, the ADA cases focus on the tension between the juror's right to serve and the defendant's right to due process. The question of who has standing to bring the ADA claim is answered by the Act itself. A 2010 New York case found that the defendant did not have standing to argue that disqualification of a juror with a hearing impairment was a violation of the ADA as the defendant was not a "qualified individual with a disability" and could not invoke the statute on the juror's behalf.<sup>8</sup>

# HIDDEN AND UNINTENDED BARRIERS TO JURY SERVICE

The process of developing a master jury list may inadvertently exclude people with disabilities from ever receiving a jury summons. A number of states use driver's licenses, voter registration, or both to create their master jury lists. Although some disabled persons may have a driver's license or a state-issued I.D. from their department of motor vehicles, many do not. Additionally, many disabled people feel disenfranchised, which is one of the reasons that the ADA and related statutes were enacted. However, as a result, they do not register to vote. The cumulative effect of this is that a segment of the disabled community will never get summoned in many states.

Another barrier is the jury selection process itself. With changing attitudes and federal and state laws that prohibit discrimination based on disability, challenges for cause may be less common and are looked at individually, rather than excluding a category of disabilities. However, as the following cases suggest, they still can happen: *Carter v. State*, *People v. Janes*, and *People v. Guay*.<sup>9</sup> Finally, if a juror is not struck for cause, there is still the peremptory challenge, which by its very nature can be used for any reason except for discrimination based on race or gender: see *Batson v. Kentucky* and *J.E.B. v. Alabama ex rel. T.B.*<sup>10</sup> Disability has not been recognized as a suspect class under *Batson* and *J.E.B.*<sup>11</sup> In a 2017 case from the District Court

for the Eastern District of California, the issue of a *Batson* challenge for two prospective jurors with disabilities was addressed:

We have been unable to find any case directly holding that the physically disabled are a cognizable class for *Batson* and/or *Wheeler* purposes. In *United States v. Watson* (D.C. Cir. 2007) 483 F.3d 828, 829-835, a case dealing with visually impaired prospective jurors, the federal court determined that disability was not to be accorded heightened scrutiny for equal protection analysis. In *People v. Green* (Ct. Ct. 1990) 561 N.Y.S.2d 130, 131, 132-133, a lower court found a peremptory challenge intended to eliminate a prospective juror solely because she could not hear, to violate New York's state constitution. The soundness of *Green's* analysis was questioned in *Lawler v. MacDuff* (Ill. Ct.App. 2002) 779 N.E.2d 311, 320. (*Dixon v. Rackley* 2017.)

After an extensive analysis, the court held that even assuming that disability was a cognizable class, no discriminatory inference could be made from the exclusion of the two jurors, so there was no need to address the question of whether disability was a suspect class.

## DEVELOPING TECHNOLOGIES

Since both physical and mental disabilities are covered by the ADA, there could be situations where a physical impairment could cause mental impairments, such as fatigue leading to language or cognitive difficulties (e.g., multiple sclerosis). As the lines between physical and mental disabilities and mobility or sensory disabilities become blurred, new assistive technologies are becoming broader in their applications, and this will affect requests for accommodations. For example, the early “Computer Aided Realtime Transcription,” now known as “Communication Access Realtime Translation” (CART), programs had a lag time between the typing of the words and when they appeared on the screen. For this reason, oral interpreting was still a preferred accommodation for those who did not use sign language. Once the lag time was reduced to one to two seconds in the 1990s, CART became an effective but expensive accommodation (Breaking Sound Barriers, pp. 1227–1231<sup>12</sup>). Individuals

with visual impairments have seen similar growth and change in technology from the initial Braille system invented in 1819 to the text-to-speech programs. Current technologies are looking at ways to bridge the visual gap in a much broader way by allowing real-time descriptions of what the blind individual is seeing. Camera-enabled glasses are worn, and the information is described by a remote party so that the individual is “seeing” in real time. Bringing artificial intelligence (AI) into this technology could mean that the real-time description is more detailed than what a sighted individual might experience (*Wired Magazine*, July 17, 2017). Since the ADA is clear that the individual with the disability cannot be charged for the accommodation, courts must look at the best way to provide reasonable accommodations. As technologies develop and become more commonplace, they also tend to become more affordable.

## INTERVIEWS

To get a better understanding of the practices used nationally by trial courts to interact with and accommodate jurors with disabilities, the authors conducted a series of six interviews with different jurisdictions. The jurisdictions that participated self-selected by responding to a request that was published in the *Jur-E Bulletin*. This selection method resulted in jurisdictions responding that had very well developed programs for accommodating disabled jurors. This was viewed as a positive development because the authors could distill some essential features of highly effective programs for accommodating the disabled. There were also some differences in the way jurisdictions provide services to this demographic. Some jurisdictions have partnerships with other

organizations and can leverage those relationships to more effectively provide accommodations. It should be noted that while jurisdictions with trial courts that are primarily funded by the state appear to have some advantages in this area, there are jurisdictions with county-funded trial courts that have also developed very effective programs. Several of the jurisdictions that were interviewed requested that they not be specifically identified. As such, none of the jurisdictions will be identified specifically. Readers who would like more specific information should feel free to contact the authors. Several of the participating jurisdictions have volunteered to talk with judges, jury managers, or other court personnel that may have a specific question regarding improving their own programs.

## THE BEST PROGRAMS ARE PROACTIVE

Every jurisdiction has people that are fully qualified to serve as jurors but have a disability that requires an accommodation for them to effectively serve. It was universally noted that one of the most challenging situations they face is having a disabled person appear for jury service and request an accommodation for the first time after they appear. Therefore, all jurisdictions should provide very clear information in their initial summons that describes how a disabled person can request an accommodation. This information should also be included on the court's general website and any jury-specific website the court may have. People in the clerk's office that may receive questions in person or via phone or email should be prepared to provide this information. Additionally, it is important that a disabled person should be able to request an accommodation in one of several formats, via phone, email, online fill-in form, or in person.

Another point made by several interviewees was that people in the disabled community tend to know one another. It is common for disabled persons to appear for service and mention another disabled person and the accommodation they were afforded. Therefore, by having a well-run program in place, over time many persons in the disabled community will become aware that court is effective in meeting their accommodation requests in a dignified way. Courts that do an exceptional job at this have many requests for accommodations. One thing to note is that if the court is getting a significant number of requests for an accommodation that start as a request for

a hardship excusal based on a disability, that is a cause for concern and may require rethinking the approach used to accommodate the disabled community. Another point made by a few of our interviewees is that disabled persons are often accustomed to getting substandard treatment by organizations. When they are treated fairly and with dignity, most are very appreciative. One court took this idea to the next level. Several of the people that work in the jury manager's office, and are routinely in the jury assembly room, learned enough ASL sign language on their own to sign hello and that an ASL interpreter was on the way.



## A SYSTEMIC APPROACH TO ACCOMMODATIONS IS THE BEST APPROACH

Several of the interviewees take a very systemic approach to accommodate disabled persons, and it was clear from the interviews that accommodation is effective in terms of costs and results. The assistive devices they have in their courts are used not just by jurors, but by any court user, including the public, court employees, judges, and attorneys. Additionally, multiple departments within the courts help ensure that people with disabilities are accommodated. For example, some devices may require the installation or configuration of specialized software, and IT departments assist in ensuring that the software is ready for use when needed. In one court, the court administrator

proactively looks for new technology as soon as it becomes available. He asks disabled persons who work for the court to test the technology, and when appropriate, it is acquired even before there has been a request for an accommodation.

The jurisdictions that had a systemic approach all had adequate funding in place to provide all the accommodations they may need annually. It is important to note that this kind of approach can only happen in an environment in which the court leadership is supportive and places a high priority on this issue.

## TRAINING AND ONGOING PATHWAYS FOR ASSISTANCE

It is very clear from our interviews that regular training is required. Jurisdictions that have very well developed programs regularly include a topic about accommodating disabled persons in their training programs. One state court we interviewed has monthly meetings for their jury managers. These may be in person or via Skype. However, they regularly include a topic on this issue. Even more important, in some ways, all of these jury managers are very familiar with one another and regularly communicate and share information should an out-of-the-ordinary request for an accommodation be made. This kind of ongoing

cooperation allows for sharing of accommodative devices in some situations. As some devices can be costly, this allows for controlling costs while still complying with the law and providing a high level of service. Another point made by several of our interviewees was the importance of maintaining an open line of communication with the ADA coordinator at the state and local level, when one is available. They have access to information and possible solutions to accommodation requests that jury managers may not. This may seem obvious, but may not always happen.

## DO NOT DENY REQUESTS UNLESS THERE IS AN EXTREMELY GOOD REASON FOR DOING SO

One of the characteristics of well-run jury systems is that they accommodate people whether or not statutes require it. A good example of this is one of our interview courts that maintained a few different types of lumbar support in or near their jury boxes. This is a relatively low cost assistive solution for people with back issues, many of which do not fit the statutory definition of disability. However, measures like this should be taken to provide jurors with comfort while they are performing their civic duty; these measures also allow jurors to focus on the trial and may promote goodwill toward the court system.

Several larger jurisdictions that we interviewed indicated that they virtually never deny a request for an accommodation. One noted that they occasionally get requests for transportation to and from the courthouse, which they deny because it is excluded by statute. However, another jurisdiction noted that they will try to provide transportation on an ad hoc basis. The ADA does not require courts to provide personal assistive devices such as wheel chairs. One court noted

that they occasionally are asked about providing a wheelchair; they deny these requests, but this has never prevented someone from serving. The ADA also does not require the court to provide an accommodation if it would fundamentally alter the program or service — in this case, jury service. Only one example of this happening was mentioned during the interviews. One court had a request from a juror, who had a learning disability, to use a recording device. The matter was referred to a trial judge, who determined that recording the proceeding would be a fundamental alteration, and that request was denied.

There are many reasons to go beyond the statutory requirements and provide an accommodation in a gray area. One is humanitarian: The accommodation may allow a juror to more comfortably participate in jury service. Additionally, it eliminates the risk of a legal action or even an informal complaint. It also helps make the jury system more inclusive, which is an important goal in jury management.



# BE AWARE OF THE AVAILABLE ASSISTIVE DEVICES

Our interviewees stressed that it is important that jury managers not only be aware of the range of accommodations that are available but also know where to source them locally. They also noted that lower-cost items that may be routinely used should be purchased by the court, even though they may be obtainable from another local source. The rationale is that when an accommodation request is not made in a timely fashion, it eliminates the

potential loss of trial time. Another point was that not all assistive devices are the same. For example, some devices for the hearing impaired work better used in conjunction with personal hearing aids, while others do not. Although the court is not required to provide the best possible accommodation, the accommodation must be “reasonable.”

*The following is a nonexhaustive list of possible accommodations*

## BLINDNESS OR LOW VISION

- Optical magnifier
- Large-print materials
- Braille, Braille note-taking computer
- Electronic note taker
- Service animals

## HEARING IMPAIRED

- Hearing assistive device
- Certified sign-language interpreter
- TTY (Teletype telephone)
- Visual or tactile pagers for communication, instructions, and an alerting system
- Telephones with amplification devices and visual and auditory alerting systems
- Fire alarms with visual and auditory alerting systems
- Assistive listening devices (e.g., FM, infrared, loop systems, and/or closed-captioning decoders)
- Captioned video-training materials
- Real-time captioning
- Electronic devices that make communication possible, e.g., UbiDuo or CART

## OTHER IMPAIRMENTS

- Bariatric seating
- Nod-alerting devices
- Court navigation volunteers
- Service animals used for conditions other than blindness

## PHYSICAL STRUCTURES

- Raised lettering on room labels
- Ramps or assistive methods to enter jury box
- Preinstalled hearing assistive devices in jury box

# ADVICE FOR RURAL OR SMALLER JURISDICTIONS

There is no question that it can be more difficult for a rural or small jurisdiction to comply with statutory requirements to provide reasonable accommodations to the disabled community. However, the law applies the same to all jurisdictions, regardless of size.

The interviewees were all from larger court systems, but they did have some advice for rural and small courts. They suggested leveraging resources and knowledge from other jurisdictions, other branches of government, and even the private sector. The first and most obvious suggestion was to know and have a good relationship with not only the local but also the state Title II coordinators. Second, if your state has trainings for jury managers, participate in

those trainings and suggest they include disability-related sessions. Additionally, take advantage of any electronic forums or listservs that are active enough that you could post a query and get a reasonably prompt response. Some jurisdictions also have been able to establish formal or informal relationships with third parties, like community colleges or health-care providers. These third parties can share information, like contact information for qualified ASL interpreters (be sure that you are aware of any state requirements for certifications of interpreters being used in the judiciary), or may even be able to loan out an assistive device. Finally, advocacy groups for the disabled could provide information in some situations.



## ENDNOTES

1. See <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#titleII>.
2. See <https://www.ada.gov/civiccommonprobs.htm>.
3. The determination of persons covered under the Rehabilitation Act of 1973 is identical to the determination under the Americans with Disabilities Act.
4. For additional assistance, see U.S. Department of Justice, Frequently Asked Questions about Service Animals and the ADA, [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).
5. See [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm).
6. This appears to have been an isolated error, rather than a pattern and practice of excluding disabled persons from grand-jury service.
7. 478 N.Y.S. 2d 455 (N.Y. Sup. Ct. 1984), *aff'd*, 76 N.Y. 2d 1, 555 N.E. 2d 259 (1990).
8. *People v. Guay*, 72 A.D.3d 1201 (2010), *aff'd* 18 N.Y.3d 16 (2011); see also *People v. Janes*, 942 P.2d 1331 (1997).
9. *Carter v. State*, 228 Ga.App. 335 1997; *People v. Janes*, 942 P.2d 1331 (1997); *People v. Guay*, 72 A.D.3d 1201 (2010), *aff'd*, 18 N.Y.3d 16 (2011).
10. *Batson v. Kentucky*, 106 S.Ct. 1712 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. 1419 (1994).
11. Andrew Weis, *Peremptory Challenges: The Last Barrier to Jury Service for People with Disabilities*, 33 WILLAMETTE L. REV. (1997).
12. John F. Stanton, *Breaking the Sound Barriers: How the Americans with Disabilities Act and Technology Have Enabled Deaf Lawyers to Succeed*, 45 Val. U. L. Rev. 1185 (2011). Available at: <http://scholar.valpo.edu/vulr/vol45/iss3/9>

# JURORS WITH DISABILITIES

## CONCLUSION

It is important for jury managers to understand that the ADA and other disability statutes apply to jury service. Additionally, it is likely a violation of the law to alter a disabled person's jury service, e.g., ensuring they are on a one-day trial, even though from a fiscal point of view it may seem appropriate. It is not advisable to do it even with the disabled person's consent.

The court must afford people with disabilities a reasonable accommodation. That accommodation does not need to be what the person requested, but as a matter of practice it makes sense to give them what they want if feasible. Courts are not required to

provide an accommodation if it fundamentally alters jury service. Fiscal constraints should not be a consideration in making either of these determinations. Although it is theoretically possible that an accommodation may be astronomically expensive, and the court may be able to claim that the cost alone makes it unreasonable, the authors were unable to identify a single example of this.

Several of our interviewee courts indicated that they were willing to provide advice to a jurisdiction dealing with a specific issue regarding disabled jurors. Feel free to contact the authors to arrange for this assistance.

