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ADA-Interim Final Regulations for Courthouses, Jails, and Prisons

(Just When You Thought it was Safe. . .To Go Back into the Holding Cell.)
As published in **American Jails**, Jan/Feb 1995

PART I

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Preface:

The Americans with Disabilities' Act of 1990 (ADA) extends comprehensive civil rights protection to individuals with disabilities, including inmates Title II of the ADA, which became effective on January 26, 1992, prohibits discrimination in the services, programs, and activities provided by state and local government entities on the basis of disability. On July 26, 1991, the Architectural and Transportation Barriers Compliance Board (Board) published the Americans With Disabilities Act Accessibility Guidelines (ADAAG) to assist the Department of Justice in establishing accessibility guidelines for new construction and alterations in places of public accommodation and commercial facilities (Title III). On December 21, 1992, the Department of Justice issued the PROPOSED Rules for Courthouses (Section II), and Detention and Correctional facilities (Section 12).

When the Department of Justice published the Proposed Rules for Title II facilities in

December of 1992, they noted that the Board would be supplementing the ADAAG in the future to include the comments and suggestions for scoping requirements for justice facilities. On June 20, 1994 the Department of Justice issued the proposed amendments for the ADAAG as revised in the INTERIM FINAL RULES that included Section 11 (Courthouses) and Section 12 (Correctional and detention facilities) along with other updates in definitions, accessible elements, and other building types. In so doing, the proposed rule would establish new ADA standards for facilities covered by the Department of Justice's title II regulations. The Guidelines set forth in the BOARD's Interim Rule are effective only as guidance for the Department of Justice. They are not binding until such time as the Department of Justice adopts them as standards. Thus, newly constructed or altered facilities, and facilities under design presently, would continue to be covered by either the Uniforms Federal Accessibility Standards (UFAS), or the adopted Title III Accessibility Guidelines (ADAAG, 28 CFR - Part 36 Appendix A, July 26, 1991) if the construction or alteration commenced between January 26, 1992 and the present time, until the Department standard (projected to be July 1995). Thus, the existing ADAAG is the current standard of care that applies to Title II (State and local governments) and Title III (Public Entities) buildings.

STATEMENT OF THE PROBLEM

The proposed Interim Final Rules ask for:

1. The proposed rules, state that all detention and correctional facilities will comply with the ADAAG requirements of 4.1 through 4.35 (formerly the Title III ADAAG requirements).

- ◆ All common use areas serving accessible cells or rooms, and all public use areas are required to be designed and constructed to comply with section 4 of ADAAG. Common use areas include exercise yards, rec. areas, workshops and areas of instruction and VOTEC training, counseling centers, cafeterias, commissaries, medical facilities, and any other rooms or spaces for the use of inmates.
- ◆ If common use areas are serving only accessible housing areas, then only those common use areas serving the accessible housing need to be accessible. For example, dayrooms and rec. areas serving accessible housing would need to be accessible. However, this does not diminish those areas used by the public or by employees which are still subject to the requirements for public use areas and employee work areas in sections 4.1-4.35.

- ◆ One exception in ADAAG given to correctional facilities is a waiver for the requirements for areas of rescue assistance in minimum requirements for new construction; 4.1.3[9], [10], [11] do not apply. The requirement on building signage 4.1.3.[16] only applies to public use areas.
- ◆ Entrances used by the public, including those used by visitors and inmates, shall be accessible. Entrances or doorways operated only by security personnel are exempt from the ADAAC requirements
- ◆ Doors not operated solely by security personnel, but YVI subject to security requirements that prohibit full compliance with ADAAG requirements, shall comply "to the maximum extent feasible" (and better document it accordingly).
- ◆ If there are entrances that are used by inmates and not the general public, at least one such entrance, and/or passenger loading zones, shall comply with ADAAC 4. 1.3[8].
- ◆ Any security systems, (metal detection, weapon screening, etc.) provided at public or other entrances into the facility are required to be accessible by 12.2.1,2 with an accessible route through fixed barriers complying with section 4.3. If the devices cannot be made accessible, an accessible route shall be provided adjacent to the screening devices to facilitate an equivalent path of travel.

2. Entrances used by the public, including those used by visitors and inmates, shall be accessible. Entrances or doorways operated only by security personnel are exempt from the ADAAC requirements.

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- ◆ Any security systems, (metal detection, weapon screening, etc.) provided at public or other entrances into the facility are required to be accessible by 12.2.1,2 with an accessible route through fixed barriers complying with section 4.3. If the devices cannot be made accessible, an accessible route shall be provided adjacent to the screening devices to facilitate an equivalent path of travel.

3. Non contact visiting areas shall be located on an accessible route.

◆ FIVE percent, but not less than one cubicle, shall be accessible on visitor and inmate sides. If counters are provided, a portion of at least 36 inches in length shall comply with ADAAG 4.32. Accessibility includes provision (Section 7.2.3) of voice communication devices, volume control, assistive listening devices, and the opportunity to plug in a TDD. The exception is if the noncontact visiting areas are not serving accessible cells, then the requirements do not apply.

◆ Fixed seats can still be used in accessible cubicles, if the required clear floor space is provided within the area defined by the cubicle (meaning the cubicle just got a lot larger). Consideration should be given to the placement of grilles, talk-through baffles, intercoms, telephone handsets, or other communication devices so as to be usable from both the fixed seat and the accessible seating area (on both sides of the cubicle). Plan for the use of assistive listening devices as per ADAAG Table A211.

4. The minimum number of inmate cells or rooms that must be accessible is at least 3 percent, but not less than one, of the total number of housing cells provided in a facility (not the entire correction's system).

◆ The accessible cells shall be dispersed among all categories, classifications, and types of housing and holding cells. The 3 percent does not require an increase in the minimum number of accessible cells, nor require proportionate distribution. The amount or percentage of accessible cells or rooms to be provided in each available housing category or level of security is not specified, since dispersion is not required to be proportionate to the total number of cells in each category or security classification level. Placement of accessible cells in housing units that can "shift" classification security level may allow additional flexibility in meeting requirements for dispersion of accessible cells.

◆ In addition to the 3 percent of holding or general housing cells being accessible, if there are special holding or housing cells for protective custody, disciplinary confinement, deter, or medical isolation, at least one serving each purpose shall comply with ADAAG.

◆ In addition to the previous requirements, at least three (3) percent, but not less than one housing or holding cell or room, shall be accessible to inmates with hearing impairments. If the cells or rooms are equipped with audible emergency warning systems or permanently installed telephones, then they shall comply with ADAAG 12.6 regarding audible and visual alarm systems. If there are no audible alarm systems, or permanent phones in the cells, then they are exempt from the additional 3 percent. The minimum 3 percent is based on the number of cells or rooms equipped with these devices, and not on the total number of cells in the facility. This requirement applies only when the alarms or telephones are provided within the individual cells or rooms. If permanently installed phones and alarms are located in common use areas, such as dayrooms, then they fall into the requirements for common use areas.

◆ Medical care facilities within correctional facilities shall comply with ADAAG 6.1,6.3,6.4 requirements for medical facility accessibility. Patient rooms or cells are required to be accessible, including medical isolation beds. At least one medical isolation bed per facility is required to be accessible, but it is recommended that all medical isolation cells be accessible. Medical isolation cells are not counted as part of the minimum number of required accessible cells.

◆ When holding or general housing cells or rooms are altered in an existing facility, at least 3 percent of the number being altered shall be accessible to ADAAG 12.4.1, until the number of accessible cells meets the requirements for the facility requirements of 3 percent.

5. Cells that are required to be accessible must be on an accessible route or path of travel as per ADAAG 4.3. Doors on that accessible route must be compliant with 4.13, except if operated only by security personnel.

◆ At least one toilet facility and one bathing facility shall be accessible. Privacy screens shall not intrude on clear floor space required for fixtures and the accessible route. The requirements for bathrooms and toilets do not preclude the placement of toilet or bathing fixtures within the housing cells or rooms as long as requirements for toilets and bathrooms, such as maneuvering space, are met.

◆ Beds shall have at least 36 inches maneuvering space along one side of the bed, and the height of the accessible bed shall be 17 to 19 inches measured from the finished floor to the bed surface, including mattresses or bedrolls. If there is more than one bed in a cell or room, the maneuvering space of the beds may overlap. Where upper bunks are provided, sufficient clearance must be provided between the bunks so that transfer from wheelchairs to the lower bunks is not restricted.

◆ Water fountains shall be accessible to persons in wheelchairs in accordance with section 4.15, yet must also accommodate persons with difficulty with bending or stooping. Design alternatives are hi-lo water fountains, or using one fountain at a standard convenient height for those who have difficulty in bending and one at a lower height.

◆ Fixed seating and tables shall comply with section 4.32 which applies to fixed seating and tables within, or serving, accessible cells. A 5 percent scoping requirement for fixed seating and tables that may be provided in adjacent common use spaces such as dayrooms is required to be accessible. Fixed benches shall be mounted at 17 to 19 inches above the finished floor. The prior width requirements for benches were dropped.

- ◆ Fixed or built-in storage facilities, such as cabinets, shelves, closets, and drawers located within housing or holding cells or rooms, shall contain storage areas that are accessible and compliant with section 4.25. Lockers that are fixed or built in would be subject to the applicable requirements of ADAAG 4.25. For example, inmate lockers under beds would have to comply with the forward reach requirements of 15 inches above the finish floor.
- ◆ All control mechanisms intended for operation by inmates shall have the required reach requirements and comply with section 4.27. No changes have been made from the original provision.
- ◆ Accommodations for persons with hearing impairments are required by section 12.4.3 (if you have audible alarms and permanent phones, then 3 percent of cells must be hearing impaired accessible).

6. If there are audible emergency warning systems in housing areas, then visible alarms complying with ADAAG 4.28.4 must be provided. If there are permanently installed telephones in housing areas, then those phones shall have volume controls complying with 4.31.5.

- ◆ As a form of equivalent facilitation for alarm systems, it is an acceptable alternative to provide electrical outlets and telephone wiring in the housing areas to enable inmates with hearing impairments to utilize portable visual alarms and communication devices made available by the operator of the facility. Title II of ADA requires public entities to make available appropriate auxiliary aids and services where necessary to ensure effective communication, unless it would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens (and it better be documented!).

DISCUSSION

The definition of "alterations" has been interpreted to include resurfacing of streets, sidewalks, parking lots, and other outdoor surfaces, and thus implements the exterior path of travel requirements and accessible parking and loading zone scoping requirements. (P.31681)

With respect to upper level jail/prison cells, ADAAG Section 12 requires only that a percentage of cells be accessible. An accessible route is not required to all cells, including those that may be located on upper tiers accessed only by stairs.

ADAAG 13 has been revised to allow platform lifts or wheelchair lifts to provide access

to raised judges benches, clerks stations, jury boxes, witness stands, and to connect levels within an individual dwelling unit. In the event that a dayroom level is different than the accessible housing, and space does not permit a ramp, a platform lift is allowable.

The Board has adopted the recommendation that facilities subject to Title II of the ADA include all principle public entrances when meeting the 50 percent requirement for accessible entrances in ADAAG 4.1.3(8)(a)(i). This requirement provides greater assurance that persons with disabilities will have access to the front entrance and may prevent excessive travel distances along isolated routes. The provision does not require an increase in the number of entrances planned for a facility. The number of planned entrances will be determined by the design of the facility.

In the interim final rule, the requirement for access through or around security systems included an exception for doors at such locations. Doors operated only by security personnel were exempt from the requirements for maneuvering clearance at doors, accessible door hardware, opening forces, and specifications for automatic doors if provided (P.31701). This exception has been revised to apply to entrances used by the public, and those used by inmates or detainees. Requirements for door closers have had the exception broadened to cover not only doors and doorways operated by security personnel, but also those doors and doorways subject to security requirements that prohibit full compliance with these provisions. Where security requirements prohibit full compliance, the applicable specifications are to be met to the maximum extent feasible.

The Board did not make any provisions for government facilities to provide tactile or audible directories, audible signs, or other wayfinding devices at this time. The Board was asked to consider a revision in signage to include incised characters. The Board confirmed that incised characters are not generally as readable, and therefore do not provide an acceptable level of accessibility. No change in the technical provisions for tactile signs has been made. The current scoping language in ADAAG 4.1.2(7) and 4.1.3(16)(a) require that those permanent rooms or spaces that are designated by permanent signs comply with ADAAG 4.30.1 - 4.30.6. The Department of Justice has reconsidered its policy regarding tactile signs whether to include room names in addition to room numbers, exit signs, etc. The Department of Justice plans to include names of rooms for Title II facilities.

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Part II

The requirement that at least one public TTY (formerly TDD-Text Display Device) be provided in at least one secured area in a detention or correctional facility has been retained. ADAAG 4.1.3 (17)(d) provides that where a bank of phones in the interior of a building consists of three or more public pay phones (as might be typically found in a prison dorm), at least one of the phones in each such bank shall be equipped with a shelf and outlet (for a TDD). This provision contains an exception for the secured areas of a jail or prison where outlets are prohibited for purposes of security or safety. ADAAG 4.31.9(3) includes a provision for equivalent facilitation which permits the use of portable devices. A requirement has been added to ADAAG 4.1.3.(17Kc)(iv) that at least one interior public TTY be provided in a public use area of a state or local government facility, when an interior public phone is provided in a public use area of that facility (like the visitation center, lobby area, etc.).

Security barriers and equivalent adjacent path provisions were not changed in the interim final regulations. It was pointed out that weapon detection screening devices are specifically designed to react to metal, such as might be found in braces and wheelchairs. Since the screening devices would be rendered neutral by the metal in these devices, the use of metal detector "wands" and hand searches were supported as an alternative method of delivery. ADAAG contains design and construction requirements for accessibility and does not cover equipment.

The Board was requested to adopt and develop lighting and acoustic standards. These are important issues which affect the accessibility of all facilities. However, the Board did not adopt any guideline in these areas and is seeking additional information. Knut Rostad and Dr. Randy Atlas, with the Advisory Council on Corrections and Acoustics, prepared a response back to the Board with the recommendation to adopt the Acoustics Design Guide for Corrections. Jails and prisons are noisy places, and hearing instructions from staff is life-safe critical. Acoustics and prevention of hearing loss should be part of the ADAAG for correctional facilities and will hopefully be considered in the future.

Courthouse holding facilities are like satellite facilities for the jail. The interim final regulations have added language to clarify that at least one cell must be accessible where central-holding cells are not separated by age or sex. (P. 31693)

There was considerable discussion on grab bar design, security concerns, and the potential for suicides in holding cells and correctional facilities. (P. 31694) It was stated that grab bars in accessible cells do not pose any more of a suicide or security risk than other cell features such as cell grills, bed frames, and air conditioning vents. Effective suicide prevention is not accomplished solely by rendering a cell protrusion

free. Effective suicide prevention is a function of screening at admission, appropriate classification, adequate staff training, and vigilant staff supervision, as well as physical plant design. The Board felt that grab bars cannot be securely attached to meet security requirements, due to structural conditions in an existing wall. In such cases, the installation of grab bars would not be required because it would be technically infeasible. However, ADAAG 4.1.6(l)(j) requires that the alteration provide accessibility and compliance to the maximum extent feasible.

In a related issue, an exception for the 36-inch length of the rear grab bar on high security stainless steel combo toilet/sink units has not been granted in new construction or alterations, since separate accessible lavatories and toilets are readily available. In an alteration, if compliance with the requirements is technically infeasible, the facility is to provide accessibility and compliance to the maximum extent feasible. Therefore, the combo unit that most closely complies with the technical provisions for toilets and lavatories should be provided (and well documented).

The Board changed the visiting area requirements to include that at least 5 percent, but not less than one fixed cubicle, must be accessible on both sides. Accessibility includes knee clearance and communication devices. Since the secured side of visiting also functions as a common use area among inmates, an exception has been added which states that only those common use areas serving accessible cells or rooms are required to be accessible. Under this exception, noncontact visiting areas, serving areas of the facility where no accessible cells or rooms are located, are not required to have accessible cubicles on the inmate side. The requirement for signage identifying the accessible cubicle has been deleted in the interim final rule because the signage is raised and brailled and can pose a security risk. The signage can be removed from the wall and used as a weapon. (P. 31695)

Having volume control on inmate phones is highly vulnerable to vandalism and can dramatically increase the cost of the phone up to 66 per cent. (P. 31\$00) The scoping requirements would only apply to those common areas serving accessible cells. The requirements for sufficient floor space at telephone handset cords to be 29 inches pose design challenges since phones may be located near cell bars or wall and thus not provide adequate floor space. Security concerns may require that phone cords not exceed 15 inches. Under ADAAG 2.2 alternatives to ADAAG requirements are allowed as long as greater or equal access is provided, and may allow the flexibility in providing access to inmate-use phones with equivalent facilitation means. One equivalent means is providing hands-free phones.

Some correctional administrators noted that inmates with disabilities may present more of a threat to security since mobility aids may be used as weapons or to hide contraband. A study by the California Department of Corrections did not find disabled

inmates posing greater security risks. The Department has found that disabled inmates, as a whole, cannot be considered to be less of a security risk. Rather, the degree of an individual inmate's security risk must be determined by classification on a case-by-case basis taking in all of the normal classification criteria. Disabled inmates, although they may appear to be less of a security risk, have assaulted staff and other inmates.

A provision was added in the interim final rule that requires accessible cells to be located in all categories or types of cells. However, this requirement does not specify the amount or percentage that must be provided in each category or security level. Dispersion is not required to be proportionate to the total number of cells in each category or security level. This provision does not require an increase in the minimum three percent scoping requirement specified for a facility overall. For example, if a small jail is required under the three percent scoping to have one accessible cell, but has four holding classifications, only one accessible is required. The minimum number required for the facility overrides the requirement of dispersion among all classifications or types of cells. Likewise, it is now allowable to cluster accessible cells of the same classification level or category to facilitate sharing the same amenities and features and delivery of service.

Medical care facilities in detention and correctional facilities covered by ADAAG 12.1 are subject to the scoping requirements of ADAAG 6.1 (1) which requires that 10 percent of patient bedrooms be accessible in certain facilities. ADAAG 6.1 requires that in general purpose hospitals, psychiatric facilities, and detoxification facilities, at least 10 percent of the patient bedrooms shall be accessible. This provision does not require jails or prisons to provide medical care units, and thus if these facilities do not contain these types of medical care facilities addressed in ADAAG 6.1 they would not be subject to that provision.

ADAAG 6.4 requires accessible patient toilet rooms and bathrooms and references sections 4.22 and 4.23. These requirements do not preclude placement of toilet or bathing fixtures within patient cells as long as the requirements for toilets, bathrooms, and maneuvering space are met.(P.31'707)

A provision has been added to clarify that medical isolation cells required to be accessible under ADAAG 12.4.2 shall not be counted as part of the minimum number of patient cells required to be accessible under ADAAG 6.1. Thus, if a medical care facility has both types of cells, at least one medical isolation cell must be accessible under ADAAG 12.4.2 in addition to the number of cells (10 percent) required to be accessible by ADAAG 6.1. It is recommended that consideration be given to ensuring the accessibility of all medical isolation cells.

ADAAG requires a minimum level of accessibility in alteration and new construction.

Some administrators may question the practicality of making cells accessible as part of an alteration at a facility not intended to house inmates with disabilities. However, the ADA recognizes alterations as opportunities for providing access, and takes advantage of the opportunity to the greatest potential, even if the altered element may not be made fully accessible to or useable by persons with disabilities.

Conclusion

While the following requirements are the specific issues mentioned for correctional facilities, the implications for full compliance with ADAAG is made by the lack of any additional exemptions. This suggests that all other areas, especially common use areas, paths of travel, staff II areas, public areas, and program areas must comply fully with the law and all of the ADAAG rules. The interim final rules require state and local government entities at make any alterations to existing entities to comply with the ADA "to the maximum extent feasible." If structural limitations or compliance would drastically alter the function of a program, service, or activity, then the entity is to do the best it can. If there are areas that do not comply 100 percent with the ADAAG, then document what sections are not possible to comply with and the reasons for non compliance. Keep this documentation in the event of litigation.

(from **American Jails**, Jan/Feb 1995)

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