

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 08/01/2018	NUMBER 04.06.155
	SUBJECT OFFENDERS WITH DISABILITIES	
SUPERSEDES New		AUTHORITY MCL 791.203; Title II of the Americans With Disabilities Act (ADA), 42 USC §12101, <i>et seq.</i>
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**POLICY STATEMENT:**

Qualified offenders with disabilities shall not, on the basis of that disability, be subject to illegal discrimination and shall be provided reasonable accommodations under Title II of the Americans with Disabilities Act (ADA) as set forth in this policy.

**RELATED POLICIES:**

- 04.06.160 Medical Details and Special Accommodation Notices
- 05.01.140 Prisoner Placement and Transfer
- 03.02.130 Prisoner/Parolee Grievances

**POLICY:**

DEFINITIONS:

- A. Disability: A physical or mental impairment, a record of such impairment, or being regarded as having an impairment, that substantially limits one or more of the major life activities of a qualified offender. Major life activities include but are not limited to caring for oneself, performing manual tasks, working, walking, seeing, hearing, speaking, breathing and learning.
- B. Mental Impairment: A mental or psychological disorder (e.g., intellectual disability, organic brain syndrome, emotional or mental illness, specific learning disabilities).
- C. Physical Impairment: A physiological disorder or condition, cosmetic disfigurement, or anatomical loss that affects one or more body system(s). This does not include disorders or conditions that are non-chronic or of short duration with little or no long-term impact (e.g., broken limbs, sprained joints, concussions; influenza).
- D. Qualified Offender: A prisoner, parolee or probationer who is engaged in a service provided by the Michigan Department of Corrections (MDOC) and meets the criteria outlined in this policy.
- E. Reasonable Accommodation: A reasonable change or adjustment to an environment that permits a qualified offender with a known disability to have meaningful access to programming and/or services or acquire provisions for auxiliary aids or equipment that enables the offender to have the most integrated setting available.

GENERAL INFORMATION:

- F. For purposes of this policy, “Administrator” means each Warden or Field Operations Administration (FOA) Assistant Deputy Director.
- G. Title II of the ADA requires that the MDOC ensure qualified offenders with disabilities are not discriminated against, excluded from participation in, or denied the benefits of services, programs, or activities provided to offenders by the MDOC based on those disabilities. No offender shall be provided with an accommodation or access to a program or service if they are not otherwise eligible for a program or service, provided that their ineligibility is not based on their disability. The offender must be able to perform the essential functions with or without reasonable accommodation and meet the eligibility requirements of the program or service.
- H. All offenders will be evaluated upon intake, transfer and discharge for disability related needs under Title II of the ADA. Offenders will also be evaluated if they request an accommodation or experience a

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medical event that requires reevaluation. An offender identified as having a disability under Title II of the ADA, or making a request for a reasonable accommodation, shall have his/her needs evaluated on a case-by-case basis. The offender shall be provided a reasonable accommodation if it is determined necessary and if it would not create an undue hardship.

- I. The ADA is not a means for offenders to address concerns related to the quality of medical care and treatment. Health care concerns can be addressed through the Prisoner Grievance process in accordance with PD 03.02.130, "Prisoner/Parolee Grievances." The ADA is also not a means to address discipline, classification, transfers, staff misconduct, or problems related to the offender's criminal conviction or charges.
- J. Each Administrator shall designate a Worksite Offender ADA Coordinator.
- K. The issuance or removal of medical details and special accommodation notices, and purchases of medically necessary items, shall be in accordance with PD 04.06.160, "Medical Details and Special Accommodation Notices." Reasonable accommodation appeals will be processed in accordance with the appeals section of this policy.
- L. Transfers of offenders with medical details or special accommodation notices shall be in accordance with PD 04.06.160 and PD 05.01.140, "Prisoner Placement and Transfer."
- M. Any Department employee who becomes aware of an offender's need for an accommodation must refer the offender to the appropriate Worksite Offender ADA Coordinator. Contractual employees shall be informed that they are required to follow this policy in the same manner as MDOC employees.
- N. All reasonable accommodation request/appeal documentation shall be maintained by the Statewide Offender ADA Coordinator in accordance with the Records Retention and Disposal Schedule.

#### REQUESTS FOR REASONABLE ACCOMMODATION

- O. If an offender wants to request a reasonable accommodation from the MDOC that is not covered under PD 04.06.160, s/he must complete the Offender ADA Reasonable Accommodation Request/Appeal Form (CSJ-562) and send the request to the Worksite Offender ADA Coordinator for review and processing. The Worksite Offender ADA Coordinator will contact the offender within 10 business days of receipt of the CSJ-562 to verify accuracy, completeness, scope of the request/appeal and accommodation sought.
- P. The Worksite Offender ADA Coordinator shall forward copies of all requests to the appropriate Administrator. The Administrator may take any immediate action to resolve the request after consultation with the Statewide Offender ADA Coordinator. Any action taken by the Administrator shall be reported to the Worksite Offender ADA Coordinator. The Worksite Offender ADA Coordinator shall send a copy of the request, recommendations provided, and any actions taken by the Administrator to the Statewide Offender ADA Coordinator.
- Q. Additional information may be required before a final determination on the request is made. This may include an offender's related medical information. Offenders are responsible for providing any requested information to the Statewide Offender ADA Coordinator as soon as possible. Failure to provide the requested information may result in denial of the accommodation requested. Any copies of records requested by the worksite or Statewide Offender ADA Coordinator will be made by MDOC staff at no cost to the offender.
- R. Only the Statewide Offender ADA Coordinator may make a final determination on a reasonable accommodation request and shall follow-up with the Administrator to ensure that any approved reasonable accommodation(s) is provided to the prisoner in a timely manner. Reasonable accommodations will be provided in a manner consistent with facility and Department policy and procedures as well as security concerns. The final decision shall be reported on the Offender ADA Accommodation Request/Appeal Response Form (CSJ-563), that will be returned to the Worksite Offender ADA Coordinator. The Worksite Offender ADA Coordinator shall ensure the offender receives a copy of the decision.

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### REASONABLE ACCOMMODATION APPEALS

- S. An offender who wants to appeal a decision made by the Statewide Offender ADA Coordinator must complete the Offender ADA Reasonable Accommodation Request/Appeal Form (CSJ-563) and send the appeal through the Worksite Offender ADA Coordinator to the MDOC Equal Employment Opportunity (EEO) Administrator for review and final determination.
- T. Only the MDOC EEO Administrator may make a final determination on a reasonable accommodation appeal. Additional information may be required before a final determination on the appeal is made. If the appeal is granted, the EEO Administrator shall follow-up with the Administrator to ensure that the approved reasonable accommodation(s) is provided to the prisoner in a timely manner. Reasonable accommodations will be provided in a manner consistent with facility and Department policy and procedures as well as security concerns. The final decision shall be reported on the Offender ADA Reasonable Accommodation Request/Appeal Response Form (CSJ-563), that will be returned to the Worksite Offender ADA Coordinator. The Worksite Offender ADA Coordinator shall ensure the offender receives a copy of the decision along with a copy of the original appeal. An offender cannot grieve a final determination.

### ACCESS AND TRAINING

- U. The prisoner orientation package shall include an explanation of services available to offenders with disabilities. The Offender ADA Reasonable Accommodation Request/Appeal Form (CSJ-562) will be made available in facility housing units and FOA field offices.
- V. In conjunction with the Training Division, the EEO Administrator shall ensure all Department staff and contractual employees who have contact with offenders receive training on pertinent ADA disability issues. Such training shall include disability awareness training regarding interactions with offenders with disabilities, as well as a review of relevant Department policies and procedures.

### PROCEDURES

- W. Wardens and the FOA Deputy Director shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive within 60 calendar days after the effective date.

### AUDIT ELEMENTS

- X. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy, pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 06/27/2018