

# **THE AMERICANS WITH DISABILITIES ACT— History, Overview, Accomplishments, Future**

Texas Judicial Commission on Mental Health

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# Equal Protection Clause & Disability

- *Buck v. Bell* (1927) (forced sterilization doesn't violate Equal Protection clause; Justice Holmes writes: "Three generations of imbeciles are enough.")
- *City of Cleburne, Tex. v. Cleburne Living Ctr.* (1985) (disability gets only "rational relationship" protection)
- *Bd. of Trustees v. Garret* (2001) (gov't can "quite hardheadedly—and perhaps hardheartedly" refuse to accommodate people with disabilities)

# Sec. 504 of the Rehab Act

- Sec. 504 (1973) prohibits disability discrimination by recipients of federal financial assistance and federal agencies
- Huge struggle to get enforcing regulations written; litigation and civil disobedience (*Crip Camp* documentary)
- But many parts of government and the larger society are not covered by § 504

# Lead-Up to the ADA

- National Council on Disabilities issues 1986 report calling for the ADA
- NCD issues second such report in 1988
- ADA bill filed in the fall of 1989
- Capitol Crawl in March of 1990
  
- ADA signed by Pres. George H.W. Bush on July 26, 1990

# ADA OVERVIEW

ADA forbids disability discrimination by:

- Employers (Title I)
- Public entities, i.e., state and local governments (Title II)
- Public accommodations, i.e., private businesses in any of 12 categories (Title III)

S. Ct.: One of the ADA's "most impressive strengths" is its "comprehensive character," and it is "a milestone on the path to a more decent, tolerant, progressive society."

# ADA TITLE II—State and Local Government Entities

Forbids:

- exclusion from benefits of public entity's services, programs, or activities (denial of meaningful access enough)
- denial of benefits of a public entity
- [catch-all] being subjected to discrimination

# Title II Coverage

- Applies to any State or local government, or their departments, agencies, instrumentalities
- “Programs, services, or activities” is broad enough to reach virtually all of the operations of a public entity
- “[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.” *Pennsylvania Dept. of Corrs. v. Yeskey*, 524 U.S. 206, 212 (1998) (J. Scalia) (internal quotes omitted).

# Title II Coverage (cont'd)

- Covered government activities include:
  - Access to the courts and judicial services
  - Probation services
  - Prisons and jails
  - Law enforcement services (after officers have secured the scene and ensured there is no threat to human life)
- Title II does not apply to federal government, so federal courts are not “public entities”

# Architectural Barriers

- New construction (post 1/26/92) must conform the technical standards
- Older construction must still be readily accessible to individuals with disabilities when looking at the program as a whole
- Need not destroy or threaten historic significance of a property
- Since 2011, correctional and detention facilities must also be accessible (28 C.F.R. § 35.152)

# Communication Access

- Must provide effective communications, which may require auxiliary aids and services (e.g., sign-language interpreters, Braille materials, note-takers, CART, FM loop system, captioning, accessible tech)
- Public entities must give “primary consideration” to type of communication, aids/services requested by PWD
- Can’t force PWD to provide their own interpreters or use family members

## T. II Policy Modifications

- Public entities must make reasonable modifications to policies, practices, and procedures to avoid discrimination
- Analogous to employer's "reasonable accommodation" obligation
- PWD does not pay for accommodation
- Liability for the failure to modify policies does not depend on intent
- Defense to modification requirement is fundamental alteration or undue burden

# Possible Modifications for Courts

- Caselaw describe various examples of modifications, e.g., continuances, alternatives to in-person attendance, shortened trial sessions, breaks between trial days, sign-language interpreters, proactive notice of the accommodation process, conducting portions of civil trial without person present or outside line of sight, etc.

# Service Animals

- Only dogs (+ miniature horses to lesser degree)
- No breed restrictions
- Includes psychiatric service animals, but not comfort animals
- Must be individually trained to do work or perform tasks for person with disability
- No certification or documentation required
- Can only ask 2 questions: (a) is animal required because of a disability, and (b) what work or task the animal has been trained to perform
- Removal can be required only if (1) uncontrolled or (2) not housebroken

# Other Obligations and Defenses

- It is no defense that “criminal case turned out okay.” Such a “no-harm-no-foul theory is inconsistent with the ADA... Lack of meaningful access is itself the harm under Title II, regardless of whether any additional injury follows.” *Luke* (5th Cir.)
- Title II (and all ADA titles) prohibit retaliation, interference, or coercion
- Another defense: direct threat to others

# Title II Enforcement

- Pre-suit exhaustion is possible via DOJ complaint, but is generally not required (outside of PLRA and special-ed)
- There is a private right of action, and the DOJ may also enforce
- Damages available for intentional conduct (but not mental-anguish damages)

# Immunity

- Counties, cities, and other local gov'ts do not have immunity from ADA Title II claims
- State entity may be immune, but not if claims implicate “fundamental right” (e.g. court access) or are for unconstitutional acts
- Even if state is immune, prospective injunctive relief is available (*Ex parte Young*)
- Judges & prosecutors get absolute immunity for *judicial* acts

# More Resources

- Online court guides on the obligation to accommodate individuals with disabilities
- [Advancing Court Accessibility for Individuals with Disabilities](#) (Southwest ADA Ctr. 2025)
- DOJ guidance, e.g., [Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act](#) (Jan. 2017)
- Job Accommodation Network's [About Mental Health Conditions](#), and resources linked

# TITLE III—PRIVATE ATTORNEYS

General Obligation: Prohibits discrimination in “full an equal enjoyment” of goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation

Coverage: Public accommodation defined by list of twelve types of entities, and includes a private law office

# Types of Discrimination Prohibited by Title III

- Denial of participation
- Providing unequal benefit
- Providing separate benefit
- Failing to Provide Effective Communication
- Failing to Provide Reasonable Modifications

# Title III Reasonable Modifications

- Title III requires reasonable modifications in policies, practices and procedures
- Analogous to employer's "reasonable accommodation" obligation
- Some accommodations may also be required by attorney ethical rules

# Examples of Modifications

- Meetings in accessible location
- Altering modes of client communication
- Allowing use of service animals

# Title III Remedies

- Private enforcement for injunctive relief, plus attorney's fees and costs
- Title III does not allow money damages, but Texas law does. Tex. Hum. Res. Code § 121.004
- DOJ can enforce, and seek a monetary penalty
- Title III allows for, but does not require, administrative exhaustion

# Attorney Ethical Requirements

- Rule 5.08(a): A lawyer shall not show disability bias or prejudice in a proceeding
- Rule 1.03(b), Comment 5: Even if the client has diminished capacity, the client may have the ability to understand and reach conclusions
- Rule 1.16(a): If client has diminished capacity because of a mental impairment, the lawyer shall (as far as reasonably possible) maintain a normal client-lawyer relationship with the client
- Rule 1.16, Comment 4: Client with diminished capacity may wish to have family members or others participate in discussions with the lawyer, but the client, not the others, makes the decisions