



High Risk Court Users: Tapping into the Value of Support Person as a Critical ADA Accommodation

National Disability Rights Network

July 2025

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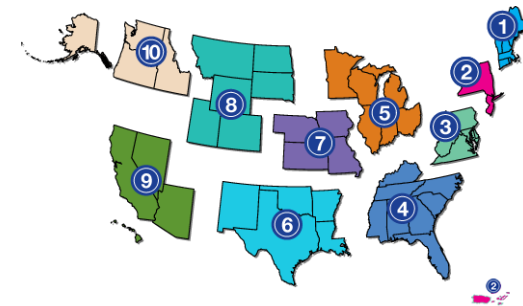
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National Network

Information, Guidance, and Training on the Americans with Disabilities Act

- **The Southwest ADA Center** (www.southwestada.org) is part of the ADA National Network and serves NM, TX, AR, LA, and OK.
- Each Regional ADA Center focuses on its region's unique needs.
- To find and contact YOUR regional ADA Center:
 - ✓ Go to www.adata.org
 - ✓ Call 1-800-949-4232



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For Comprehensive Information and In-Depth Insight

❖ Advancing Court Accessibility for Individuals with Disabilities

- Download the fully accessible PDF guide for continued access.
- Share this resource widely and encourage others to download the PDF.
- You can also email Julie Ballinger - julieDballinger@outlook.com to receive the Guide.

(<http://www.southwestada.org/html/publications/Title2/ADA%20Court%20Guide-SWADAC-FINAL.pdf>)

Disclaimer and Training Context

- The information herein is intended solely as informal guidance and is neither a determination of legal rights or responsibilities under the ADA or any other law, nor binding on any agency with enforcement responsibility under the ADA or any other law.
- This training is presented to the National Disability Rights Network in the same format used for state and local courts, so that disability rights organizations gain insight into how courts are receiving this ADA training.

Who Are Court Users? (That Can Have a Disability)

Can include:

- Attorneys
- Defendants (including incarcerated persons)
- Litigants (including self-representing)
- Victims
- Court User's Social Circle
- Married Couples
- Divorcees
- Parents
- Children/Juveniles
- Legal Guardian
- Personal Representative (executor and administrator)
- Witnesses
- Jurors
- Expert Witnesses

Who Are Court Users? (That Can Have a Disability) ⁽²⁾

- Various Practitioners such as Social Workers and Mental Health Professionals
- Intervenor
- Interpreters/Translators
- Law Enforcement / Probation Officers
- Media
- Researchers
- Volunteers
- Advocates
- Court Spectators
- Various Government Related Staff
- General Public

Program Access Framework

- **Consistent Approach** = “How can we make this activity accessible to and useable by this individual with their particular disability?”
- Requires that a public entity make its programs accessible when **viewed in its entirety** (evaluation and transition plans)
- Program accessibility may be achieved by a number of methods in the most integrated setting for people with disabilities which includes:
 - ✓ **Policy modification**
 - ✓ **Effective communication**
 - ✓ **Architectural access**

Start with which requirements apply in each individual situation and go from there.

Undue Burden Claims

A Public entity is not required to provide program access if it would result in:

- ✓ fundamental alteration in the nature of the program or undue financial and administrative burden.

Weighing Civil Rights vs. Undue Burden - Will justice be served?

- Will the lack of disability related access result in significant detrimental harm to the individual or those associated with them?

Undue Burden Claims ⁽²⁾

Court **carries the burden of proving** fundamental alteration or undue burden = **formal process** of determination.

The Court must:

- consider ALL resources available and document the reasons for claiming undue burden and
- do what it can up to the point of fundamental alteration or undue burden to create access.

A Question of Terminology?

- Entities like courts and higher education often use the broad term **ACCOMMODATION** to refer to policy modification, effective communication, and architectural access.
- **Why should you be familiar with the terminology? Each term aligns with specific regulations and requirements.**
- While distinct, all terms share the goal of ensuring programs, services, and activities are **accessible to and usable by** individuals with disabilities through program access.

Let's Talk About Ableism

- **Ableism** is the **discrimination** of and **social prejudice** against people with disabilities based on the belief that typical abilities are superior resulting in societies and systems that are built and operate in favor of able-bodied people (based on how a vast majority of people physically, cognitively, and emotionally function).
- If a person physically, cognitively, or emotionally functions differently from the vast majority, **society is simply not built** for them.

Let's Talk About Ableism ⁽²⁾

- The **Justice system** itself is **not an exception** to this discrimination.
- It's important to be able to **recognize when a court activity is NOT accessible** and how to **effectively remove disability related barriers** to create access to justice.
- The use of a **support person as an accommodation** can be an effective method of removing such barriers.

Alarming Statistics - The Courts Are the Gateway

- Est. **32%** of state and federal **inmates** have a disability = over **750,000 people** with disabilities are incarcerated across the nation
- Inmates with **psychiatric** disabilities **exceed** the number in state psychiatric hospitals tenfold
- Est. **46%** of inmates have a **traumatic brain injury** - compared to 8.5% in the general population

Alarming Statistics - The Courts Are the Gateway ⁽²⁾

- US prisons hold more than 550,000 people with intellectual disabilities (Nearly 1 in 4 inmates)
- Autism is est. to be 1-2% - autism in prison populations est. 4% to 15%
- **40%** of local **jail inmates** report having at least one **disability** (Bureau of Justice Statistics Report)
- Est. **85%** of **incarcerated youth** have a disability and are often undiagnosed / are referred to the juvenile justice system earlier than youth without disabilities / referred for more serious crimes / experience shorter survival times before they recidivate

The ADA is the Floor, Not the Ceiling

The ADA was never supposed to be the end.

As Justin Dart, Jr., considered to be a father of the ADA, said when it was passed:

"The ADA is only the beginning. It is not a solution. Rather, it is an essential foundation on which solutions will be constructed."



Is a Support Person a Viable Way to Remove Disability Related Justice Barriers?

Support Person as a Possible Accommodation

- A support person as a **modification** of rules.
- If **set up with the understanding** of what the disability-related obstacles are and how the support person can contribute to overcoming these hurdles, this accommodation can be a viable way to mitigate justice barriers.
- This accommodation **may be simple** and straight forward OR involved and somewhat **complicated** requiring quite a bit of effort to set up and implement.
- It can be very **helpful** for court users with disabilities in **various court settings/activities** such as the courtroom, self-help centers, family services, therapeutic justice, mediation, victim/witness assistance, online services, and more.

Support Person as a Possible Accommodation ⁽²⁾

- A support person may be **needed for many reasons** depending on what the court activity involves and the person's disability.
- This accommodation should be **effective** for **both** the **individual** and the **court**.
- This accommodation does **not create a special advantage** for court users with disabilities; instead, it can help **level the playing field** to allow a person with disabilities to access a complex and difficult and, at times, inaccessible court system/activity.

Terminology

What is the person called?

- Support Person
- Communication Assistant
- Personal Assistant
- Helper
- Professional Assistant
- Companion

What this person is NOT:

- Advocate
- Guardian
- Representation Lawyer

Who May Need a Support Person as an Accommodation

- Examples can include, but not limited to:
 - **People who have** a wide range of psychiatric conditions, autism, conduct disabilities*, dementia, learning and intellectual disabilities, brain injuries, attention deficit / hyperactivity, post-traumatic stress, anxiety condition, etc.
 - This **can include** where these individuals have difficulty managing emotions, stress, or anxiety and may need a support person to help keep them calm and to make sure they comprehend what is happening so they can adequately respond in their best interests.
- *A conduct disorder refers to any of a group of serious emotional and behavioral problems in children and adolescents.

Who May Need a Support Person as an Accommodation ⁽²⁾

- **Other impairments** such as:
- Cancer or multiple sclerosis, where cognitive limitations such as thinking, remembering, and concentrating may be issues, and/or where fatigue may be present. A support person can help the person focus on the purpose of the activity and may offer actual assistance in following a dialog, remembering the concerns to be addressed, and taking notes.
 - Some disabilities may be **hidden or not easy to detect**, but justice barriers exist. Other disabilities can be more obvious, and barriers are more easily realized.
 - Note: adults with disabilities report experiencing **frequent mental distress almost 5 times** as often as adults without disabilities (CDC).

How Do I Know a Court User Needs a Support Person?

- ❖ Think about disability from a standpoint of **access** and **functional** needs.
- Focus on **access and functional needs** instead of solely relying on diagnostic labels.
- Two people with the same type of disability can be affected in **very different ways**.
- Instead of solely focusing on the court user's diagnosis -- the idea is to **focus on**, through the interactive process with the individual and their significant others, **what they may need** to fully participate and/or **how their disability** impacts their ability to participate in the court activity.

How Do I Know a Court User Needs a Support Person? ⁽²⁾

In these situations, **a diagnosis would not necessarily provide** the most **helpful information** in determining if a support person is a viable accommodation.

- A witness has Autism. Does the disability interfere with perception, communication or recalling events, especially if the person is feeling frightened or stressed? Would a support person help remove these barriers in order to make the testimony less frightening or confusing?
- If a court user, due to having a developmental disability, automatically acquiesces to what they perceive as authority and succumbs to whatever is suggested to them in terms of options, a support person can help them understand each option and provide an environment where the person feels safe to make decisions on their own.

Documentation

- In rare instances, it **may be necessary to obtain** medical, psychiatric, or other types of documentation.
- Diagnostic information can be **additionally helpful** to learn of and understand a court user's **access and functional needs**.
- However, the information must be **directly applicable** to that individual and related to the **particular court activity**.

Example

- The witness is on the autism spectrum, and one potential symptom is a strong tendency to defer to perceived authority figures. Through the interactive process and medical documentation, it should be assessed whether this applies to the individual. Certain court procedures may create barriers due to this disability-related manifestations.

Who Can Be a Support Person?

The selection of a support person depends on various factors, including:

- **unique characteristics** of the individual court user regarding their personality, preferences, and individuality,
- along with their **specific disability manifestations**, the nature of the court **activity**, potential disability-related **barriers**, and the **expertise** required to provide an effective accommodation.
- This **support person could be** a knowledgeable 3rd party: a significant other, such as a family member, a peer who has successfully faced similar challenges, or a professional such as a person from a disability organization, a social worker, a psychologist, a case manager, or a specialist in the specific disability of the individual.

How Can a Support Person Help Remove Barriers?

Support person who knows/learns of the court user & their abilities can, for example:

- Ensure that the court user fully **understands** the purpose of the court activity.
- Help the court user **maintain focus** during the court activity.
- Provide comfort to help **ensure calmness**, allowing the court user to sit quietly when needed.
- Assist in **easing apprehension** and **anxiety**, ensuring that the court user remains fully aware of what is happening.
- **Alleviate** the high tension of alienation, being outnumbered, overwhelmed, and nervousness, enabling the court user to focus and fully participate.

How Can a Support Person Help Remove Barriers? ⁽²⁾

- Serve as an asset in **facilitating** and **communicating information** to the court user, fostering comprehension.
- Aid the court user in **following dialogue**, remembering **concerns** to be addressed, and **taking notes**.
- Ensure that any **consequences** and **options** are **understood** by the court user.
- **Detect signs** of **over-stimulation** that could lead to a meltdown by the court user.
- **Detect signs** of **confusion** and help clarify any misunderstandings for the court user.
- **Identify** disability-related **barriers** that **may arise** during the court activity.

Instituting the Accommodation of a Support Person

- Requires a **structured** and **deliberate approach** to ascertain its effectiveness in facilitating access to court activities.
- This process begins by initiating the **interactive process** with the individual, potentially involving their significant others if appropriate.
- If a **third party is making the request**, involving the individual with a disability in the interactive process as much as possible is essential and respectful.

Instituting the Accommodation of a Support Person ⁽²⁾

- Through this process, identify any aspects of the **court activities** that could be or are **inaccessible** to the court user.
- If needed, consider consulting with and/or bringing in **knowledgeable third parties** to aid in the process.
- Identify the **ADA requirements applicable** which include policy modification, effective communication, and physical access.
- Following this, **evaluate the effectiveness** of a support person in addressing identified barriers to provide equal opportunity and participation of the court user.

In Considering a Support Person as an Accommodation

In assessing whether a support person would be an effective accommodation consider the following:

- The **specific role** the support person will play in **removing** identified **barriers**.
- The **behaviors or actions** the support person will undertake to facilitate barrier removal.
- Determining the **most suitable individual** to serve as the support person.

Timing of Requests

- A **court user or their 3rd party can make** an access **request at anytime** because the individual may not be aware of possible barriers until they come up.
- **However**, keep in mind that the **contextual** nature of the accommodation request (including both the nature of the disability and type of accommodation requested) together with the particular judicial proceeding or court activity at issue and the timing of when the request is made, **will all factor into if** a reasonable accommodation can be provided and, if so, the **type** of accommodation provided.

Arranging the Accommodation

- When coordinating the accommodation, ensure, if possible, the support person is involved from the outset. During this process, communicate the **accommodation details** to both the **court user** and the **support person**.

Consider the following when setting up this accommodation:

- Ensure **clear communication** by the court with both the court user and the support person.
- Use **plain language** instead of technical legal terms or jargon, when needed.
- Be prepared to **repeat information** and **explain concepts** more than once, if necessary.

Arranging the Accommodation ⁽²⁾

- Provide **written instructions**, if helpful.
- Utilize **visual or other communication aids**, if needed.
- **Visit the location** where the activity will occur to explain what to expect.
- Discuss the court **activity in detail**, including how the court user will participate, and the role descriptions of the individuals involved.
- Ensure **privacy** for matters the court user may not wish to share with others, including their support person.

Clearly Specify the Role of the Support Person

- Define the **specific behaviors the support person is authorized to engage in** to facilitate access. Break down these behaviors to identify their exact nature and implications (may be helpful to list **in bullet form**).
- Provide explicit clarity on the support person's responsibilities in creating access, ensuring they **do not exceed their role** and inadvertently influence the court user's actions or statements.
- Outline **prohibited behaviors** for the support person and consequences if these behaviors occur (which could result in a significant alteration of the court activity).

Clearly Specifying the Role of the Support Person ⁽²⁾

- Instruct the support person on **appropriate actions** to take if they become aware of **remaining barriers** during the court activity.
- Explain any **additional accommodations** being implemented and how they **collectively remove barriers**, ensuring the support person understands their role in the cohesive approach.
- Emphasize the **ultimate goal** of what should be accomplished for the court user.
- Ensure the support person **is informed** that they may be **exposed to confidential information** while in the role of support person. They must **maintain this information as confidential**.

Appropriate Parties Must Be Informed

Appropriate relevant parties fully understand **details** of this accommodation. Appropriate parties **may** include:

- judicial officers, defense attorneys, public defenders, prosecutors, clerks of court, bailiffs / security personnel, court program directors, and other relevant individuals.
- Take necessary steps to ensure that **appropriate parties**, if necessary, **agree** to the utilization of a support person as an effective accommodation for the court activity.

Appropriate Parties Must Be Informed ⁽²⁾

- This is crucial because the accommodation's effectiveness can be **easily and quickly derailed** by key persons involved in the court activity, such as judges, attorneys, court appointed evaluators, etc.
- It is the court's responsibility to **ensure the uninterrupted implementation** of the approved accommodation, preventing any court party from interfering.
- **Do not discontinue** the support person accommodation during the activity simply because the court user appears to be **managing** adequately **on their own**.

Support Person Policies

- The care that needs to be taken in these policies is that the **policy does not deny** the ability to conduct **individual assessments** and implement the accommodation in a **tailored** manner.
- This approach should remove barriers **without fundamentally altering** the court activity.
- Policies and procedures should **emphasize flexibility** to ensure the removal of disability-related barriers, thereby allowing equal participation in the activity.
- With the ADA, **one size does not fit all.**

Awareness and Education

- **To ensure equitable access** to justice for individuals with I/DD, psychiatric conditions, autism, and other related disabilities, it is imperative to provide adequate support, including the accommodation of an **effective support person**.
- This begins with **comprehensive education and training** for court staff to deepen their understanding of these **conditions and dispel misconceptions**.
- This can be **achieved through various means** such as workshops, seminars, informational materials, and community relationships.

Awareness and Education ⁽²⁾

- **Address** any **biases or discomfort** that staff may have when interacting with individuals who are neurodivergent, with behaviors that may not be well understood.
- Practicing **empathy and respect** involving active listening, patience, and a non-judgmental attitude is paramount in fostering an inclusive environment within the justice system.
- **Building ongoing relationships with disability communities** comprised of individuals with these types of conditions, and collaborating with state and local governments and community organizations that serve these populations, are essential steps. These partnerships can provide **invaluable insights** into the development of policies and practices, as well as seeking their input on accommodations. **See resources section.**

Good Faith Efforts!

- Always move towards **solutions** via a **variety of avenues** involving an accommodation / modification / effective communication / physical access to enable the person, as much as possible, to fully participate in the court activity.
- **Document all** compliance efforts and successes.
- Remember to consider **confidentiality** of certain information as applicable per the court situation given the underlying spirit of the ADA. For example, assuring confidentiality of medical documentation vs. the existence of an accommodation request.

End Goal

Is Justice Being Served?

Small Claims Court

In small claims court the individual who is trying to get their apartment security deposit refunded since they have moved, is quiet and reserved, avoiding any eye contact with anyone and continually squints her eyes. When spoken to this individual gives no response, appears disturbed, and begins to do repetitive movements of rocking and covering her ears with her hands. The judge stops the proceeding and decides to conference with the ADA Coordinator.

- **Is a support person a viable accommodation?**
- **It depends...**

Family Services

- A parent seeking joint custody is not able to sit for long periods of time and has a hard time focusing on the parent interview and expresses that this situation is exasperating their anxiety and stress.
- **Is a support person a viable accommodation?**
- **It depends...**

Parent

- A young adult has been arrested for assault. They have also been charged with resisting arrest. The parent of this individual tells the court person who has set up the preliminary hearing that her son has some sort of intellectual disability but that they have been unable to get a specific diagnosis. The parent asks to be able to sit next to her son during all court proceedings and her son wants this to happen. During the hearing the mother continues to whisper to her son. The judge interrupts and orders the parent to remain silent. The parent attempts to explain that she is only making sure that her son understands what is going on, but the judge interrupts her and repeats the order to be silent.
- **Is a support person a viable accommodation?**
- **What went wrong regarding the accommodation?**

Court Trial

- The brother of a young woman who is accused of shop lifting is requesting that he be able to sit next to her during her trial. He explains that his sister, who is on the autism spectrum, may repeat motions when stressed. He also indicates that she can have inappropriate reactions under normal circumstances, such as laughing while the judge is speaking. The brother believes that he can keep her mostly calm so his sister will be able to understand what is happening and how to respond in a way that is in her best interests.
- **Is a support person a viable accommodation?**
- **It depends...**



The Richness of Relationships and Resources

- Centers for Independent Living ([directory](#))
- State Commission for the Blind / Division of Vocational Rehabilitation
- State Commission for the Deaf and Hard of Hearing
- Governor's Commission on Disability
- State Agency on Developmental Disabilities
- State Brain Injury Advisory Council
- State Assistive Technology Program (<https://ataporg.org/> and <https://at3center.net/state-at-programs/>)



The Richness of Relationships and Resources ⁽²⁾

- State Schools for the Blind and Deaf
 - [The Arc](#), including [Pathways to Justice](#)
 - [University Centers for Excellence in Developmental Disabilities](#)
 - [National Disability Rights Network](#) - an organization that is federally funded to provide advocacy services to individuals with all types of disabilities. They can also be a resource for the courts on disability compliance, training, and technical assistance.
- **Resources Lead To Other Resources!**



Other Resources

- Disability Specific and Other Organizations and Associations

Examples

- **Alzheimer's Association** www.alz.org
- **Substance Abuse and Mental Health Services (USDHHS)**
www.samhsa.gov
- **Autism Society of America** www.autismsociety.org
- **National Council on Disability** <https://www.ncd.gov/>

ADA RESOURCES

- **National ADA Network** - In-depth knowledge of the Title II requirements of the ADA in order to create an ADA compliant customer-oriented culture, go to the National ADA Network **Title II Tutorial** www.adatitle2.org.
- **U.S. Department of Justice ADA Website** - There are a **wide variety** of very helpful ADA Title II publications www.ada.gov
- **U.S. Access Board** www.access-board.gov
- **Job Accommodation Network** <https://askjan.org/> - JAN is about employment **but can be helpful in figuring out barrier removal in other kinds of situations.** Make sure to check out **their website** which has many solutions for all types of accommodations.

ADA Best Practices Tool Kit for State and Local Governments



The US DOJ Tool Kit is designed to teach state and local government officials how to identify and fix problems that prevent people with disabilities from gaining equal access to state and local government programs, services, and activities.

www.ada.gov/pcatoolkit/toolkitmain.htm



Courts and Disability

- **National Council on Disability** - [Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children](#)
- **National Center for Access to Justice** - [Disability Access - 2020 | NCAJ](#)
- **National Center for State Courts** - [NCSC](#)
- **State Justice Institute** - [State Justice Institute \(sji.gov\)](#)

Questions? Comments?

