



*State of North Carolina
Department of Public Safety
Prisons*

Chapter: E
Section: .2600
Title: **Reasonable
Accommodations for
Offenders with
Disabilities**

Issue Date: 03/31/21
Supersedes: 09/05/13

POLICY & PROCEDURES

References 5th Edition Standards for Adult Correctional Institutions

Related to ACA Standards 5-ACI-2C-11, 5-ACI-5B-11, 5-ACI-5E-03

.2601 AUTHORITY

This policy is issued by the **Commissioner** of **Prisons** who is given the authority to manage and direct the total operations of **Prisons** and to establish such rules and regulations as prescribed.

.2602 PURPOSE

Title II (Subtitle A) of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act prohibit public entities from discriminating against any qualified individual with a disability in their facilities' jobs, programs, activities, or services. The purpose of this policy is to establish policy and procedures regarding the Prisons' commitment to be in compliance with the ADA and Section 504 of the Rehabilitation Act. **Consistent with** the ADA, **the purpose of this policy** is to **ensure** equal access with reasonable accommodations to all otherwise qualified individuals for existing jobs, programs, activities, or services offered by **Prisons**.

.2603 APPLICABILITY

This policy is applicable to all **offenders** within the North Carolina Department of Public Safety **Prisons**.

.2604 DEFINITIONS

- (a) Disability
- (1) A physical or mental impairment that substantially limits one or more of an individual's major life activities; or
 - (2) A record of such an impairment; and/or
 - (3) Perceived or regarded as having such impairment.

- (4) The following conditions do not constitute disabilities: transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, psychoactive substance abuse disorders resulting from current illegal use of drugs, the current use of illegal drugs, homosexuality or bisexuality.
- (b) Major Life Activities – Includes such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, lifting, bending, reading, concentrating, thinking, communicating, working, the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, and reproductive functions.
- (c) Substantial Limitation of a Major Life Activity – A condition that renders an individual unable to perform a major life activity that the average individual in the general population can perform, and the determination of which requires an individualized assessment.
- (d) Physical or Mental Impairments
- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
- (2) Any mental or psychological disorder such as **intellectual disability**, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (e) Reasonable Accommodation
- (1) A modification or adjustment to the physical environment, procedures or the **process** in which tasks are carried out that enable a qualified **offender** with a disability to perform all essential job functions or to participate in a program or service or to use a facility.
- (2) **Prisons** will make reasonable modifications or adjustments to physical environment, procedures or the manner in which tasks are carried out that are consistent with legitimate penological interests in order to allow qualified **offenders** with disabilities the same opportunity of usability and access as non-disabled **offenders**, unless doing so would create an undue hardship for **Prisons**, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the individual or others.
- (f) Qualified **Offender** with a Disability – An **offender** with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural,

- communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.
- (g) Undue Hardship – An action requiring significant difficulty or expense in the implementation of an accommodation or which would result in a threat to facility security.
 - (h) Prisons – North Carolina Department of Public Safety, Adult Correctional facilities.
 - (i) Facility – A building or site owned, leased, used or controlled by Prisons.
 - (j) Prisons' ADA Coordinator – A position at the Prisons Administration level who is responsible for overseeing and managing the implementation and coordination of this policy within Prisons.
 - (k) Prisons' ADA Compliance Specialist – Certified ADA Specialist position at the Prisons Administration level who will assist the Prisons implementation and coordination of this policy and who will be responsible for ensuring that all facilities comply with the ADA law when developing, maintaining, and implementing offender jobs, programs, activities and services. This responsibility will also involve identifying and correcting any non-compliance and/or barriers to compliance.
 - (l) Facility ADA Coordinator – The position designated by the Commissioner of Prisons to ensure compliance and implementation of this policy within a prison facility. For purposes of this policy and program, that position shall be the Associate Warden for Programs at each facility. In the absence of an Associate Warden of Programs, the Facility ADA Coordinator shall be the facility's highest-ranking Program staff member under the Warden. This position will review, manage, and ensure implementation of approved accommodations at the facility.
 - (m) Facility Disability Case Managers – Correctional Case Managers who have received specialized training to assist offenders with disabilities that have been identified under the Americans Disabilities Act (ADA). This individual will collaborate with the Behavioral Health Social Worker regarding offender job and program needs/qualifications pertaining to the assessment for offender's request for ADA accommodations.
 - (n) Behavioral Health Social Worker – Social Workers are assigned organizationally under the Behavioral Health Director and the Director of Social Work Services. This individual will complete an assessment of the need and validity of offender's request for ADA accommodations and make recommendations to the Facility ADA Coordinator for final determination of the request.
 - (o) Direct Threat – A significant risk of substantial harm to the health and safety of the offender population, prison facility, staff, or the public that cannot be eliminated or reduced by reasonable accommodation.

- (p) ADA Assigned or Earned Time Credits – Offenders are eligible for Gain or Earned Time sentence credits as outlined in the Sentence Credit Policy (B.0100) Section .0118 and .0119. ADA assigned is an assignment for disabled offenders that cannot be otherwise accommodated to earn sentence credits.

.2605 POLICY

It is the policy of Prisons to establish procedures for an offender to request an accommodation for a qualified disability that affects a major life activity and to ensure that:

- (a) *Every offender, including an offender with a qualified disability, shall be housed in a manner that provides for their safety and security(5-ACI-2C-11);*
- (b) Reasonable accommodations are made only if the accommodations pose no direct threat to the individual requesting the accommodation or cause an undue hardship on Prisons;
- (c) *Reasonable accommodations shall be made to the physical structure of housing for an offender with a qualified disability to accommodate for the physical limitations of the disabled offender and facilitate the offender's inclusion in facility life(5-ACI-2C-11);*
- (d) The Facility ADA Coordinator will ensure visually impaired offenders are assigned to bottom bunks in their assigned living area.
- (e) *Reasonable accommodations shall be made to facility jobs, programs, activities, and services to permit accessibility by a qualified offender with a disability(5-ACI-2C-11);*

.2606 EQUAL ACCESS TO JOBS, PROGRAMS, ACTIVITIES, AND SERVICES

Eligible otherwise qualified offenders with a disability shall have the same opportunity for access to jobs, programs, activity(s) or service options as eligible otherwise qualified non-disabled offenders.

.2607 PROCEDURES

(a) ADA Accommodation and Provisions

(1) Requests for all ADA accommodations will begin with:

- (A) The offender completing and submitting the Offender Request for Reasonable Accommodation Form (DC-746) (Attachments A and B); or
- (B) Health and Wellness staff identifying the offender as Activity 4 or 5; or
- (C) Through referral from staff (other than Health and Wellness staff) related to an Administrative Remedy (DC-410), grievance filed by the offender

concerning issues with accommodations under the ADA, and as defined in this policy; or

(D) Any staff referral based on the current condition of the offender.

(2) Considerations for ADA Assignment

The assessment of an ADA Assignment will be done by utilizing the protocols outlined.

(A) Offenders will be ADA assigned when a reasonable accommodation cannot be made that allows the offender access to earn sentence credits below.

(B) If the offender is found not to be disabled under the ADA upon completion of the Disability Assessment (DC-927) by the Behavioral Health Social Worker, then no further action is needed and the offender is ineligible to be ADA Assigned /Earn time.

(b) Request for Accommodation

(1) The Form DC-746 (**Offender** Reasonable Accommodation Request) will be made readily accessible to all offenders by any and all prison staff.

(2) *An offender with a disability may submit their request for reasonable accommodation by submitting a written request for accommodation using the DC-746 to their Case Manager(5-ACI-5B-11).*

(3) *If an **offender** is believed not to be mentally competent to make a request for a reasonable accommodation, the **Behavioral Health Social Worker** will be responsible for submitting a staff referred DC-746 to the Offender's Case Manager(5-ACI-5B-11).*

(4) **Offenders will receive a written response to all requests for accommodations.**

(5) Once completed, the DC-746 Form must be forwarded by the Case Manager, to the Disability Case Manager. *The Disability Case Manager will contact the assigned facility or **Regional Behavioral Health Social Worker** to start the process of review and evaluation for ADA accommodation needs(5-ACI-5E-03).*

(c) Justification for Denial of Request for Accommodation - A request for accommodation may be denied for any of the following reasons:

(1) A request for accommodation shall be denied when it would pose a risk to the safety and security of the prison facility, staff, or the public, or when the request would

adversely impact other penological interests, e.g., deterrence of crime, interference with rehabilitative efforts, and maintenance of offender discipline.

- (2) In making determinations for reasonable accommodation, public safety, health, safety, and security of all offenders and staff shall take priority over an accommodation decision.
- (3) Prisons need not take an action to provide accessibility to a job, program, activity, or service if the action would impose or require any of the following:
 - (A) An accommodation that does not meet the standard of reasonableness, as determined by the Prison's ADA coordinator and the Division's Rehabilitative Services Director, within a correctional setting or a NC State Agency.
 - (B) A fundamental alteration of the purpose of the job, program, activity or service. The Prison's ADA Coordinator shall consult with the Prison's ADA Compliance Specialist when making accommodation decisions to ensure that the accommodation does not cause fundamental alteration of the job, program, activity, or service.
 - (C) An accommodation that creates a direct threat to safety and security. The Prison's ADA Coordinator should consult with the Prison's Security Section, before making a final determination on the potential risk to security posed by an offender's requested accommodation.
 - (D) A request for accommodation shall be modified if equally effective access to a job, program, activity or service can be afforded through an alternate method that is deemed to provide equally effective access and/or equally effective communication, and will meet the standard of reasonableness.
- (4) No accommodation: DC-746 forms will be denied if the request does not meet the definition of disability accommodation/modification and/or lacks correlation with an underlying substantial limitation.
- (5) Medical Issue: DC-746 forms will be denied if request is for or about medical care and treatment, such as prescription medication, health care appliance, or medical restrictions. In this case, the Prisons ADA Coordinator will advise the offender to follow facility sick call procedures.
- (6) Unreasonable: DC-746 forms will be denied if records/investigation does not support a substantial limitation or disability access issue, or if a reasonable, equally alternative is available.

(d) Appeal Process

- (1) An offender who has filed a DC-746 which has been denied, and they disagree with the determination, may submit an Administrative Remedy Procedure form (Grievance, form DC-410) in accordance with Prison policy G.0300. The grievance must state the offender's specific disability or disabilities and the specific accommodation or service the offender has been denied

- (2) If the offender is found to be disabled, but otherwise qualified, and the job, program, activity or service is available, and accommodations can be provided, the offender is placed into the job, program, activity or service and receives gain/earned time credit at the rate designated for the job, program, activity or service assignment.



Commissioner of Prisons

March 31, 2021

Date

E.2600_03_31_21



North Carolina Department of Public Safety

Division of Adult Correction/Prisons

OFFENDER REASONABLE ACCOMMODATION REQUEST (ORAR) FORM

I request reasonable accommodation due to my impairment. I understand that this is only a request, which will begin the inquiry into whether or not I am entitled to receive a reasonable accommodation. I also understand that my housing may not be immediately affected while my request is under consideration. I will be within my rights to file a grievance through the offender grievance process should I not agree with the determination made regarding this request for reasonable accommodation.

Note: Appropriate Division of Adult Corrections staff may assist an offender in completing this form.

I am/have *(State Impairment)*

I am unable to *(Describe Limitation or Disability)*

Accommodation Requested:

A request for an accommodation may be denied if the Prisons Section cannot adequately evaluate the request without reviewing OR without access to health information relevant to the accommodation you may be seeking. Your health information is private and cannot be revealed to without your permission. Do you wish to provide a waiver that allows to obtain health information from Prison Health Services or any other health care personnel, private physician or clinic, for the purpose of evaluating your accommodation request? You may revoke your waiver at any time by providing written notice of the revocation.

I **do** wish to give access to my health information for the limited purpose of having DAC evaluate my request for an accommodation.

I **do** wish to give access to my health information for the limited purpose of having DAC evaluate my request for an accommodation.

Offender's Signature:

Date:

Staff Accepting/Assisting with Completion of this Application must forward this form to the Facility ADA Coordinator for a determination.

Staff Name/ Rank/Title (Print):

Staff Signature:

Date:

Original to Facility ADA Coordinator; Copy to Offender

Offender Name _____

Offender # _____

Unit # _____



North Carolina Department of Public Safety

Division of Adult Correction/Prisons

OFFENDER REASONABLE ACCOMMODATION REQUEST DETERMINATION FORM

Facility or Division ADA Coordinator Determination:

Approved Denied Modified Initials: _____ Date: _____

Specific accommodation provided:

Explanation of modification or denial (if applicable):

**An offender has the right to file a grievance through the offender grievance process should he/she not agree with the determination made regarding a request for reasonable accommodation.*

Explanation of delay, if any:

Facility ADA Coordinator's Signature: _____

Date: _____

Offender's Signature: _____

Date: _____

Division ADA Coordinator's Signature: _____

Date: _____

Served upon offender by:

Staff Name/ Rank/Title (Print): _____

Staff Signature _____

Date Served: _____

Completed/Signed Original to Offender Health Record.
Copies: Offender, Facility DIB CM, Facility ADA Coordinator, & Division ADA

Offender Name _____

Offender # _____

Unit # _____



Departamento de Seguridad Pública de Carolina del Norte División de Correccionales/Prisiones para Adultos

FORMULARIO DE SOLICITUD DE ACOMODACIÓN RAZONABLE (ORAR)

Solicito acomodación razonable por causa de mi deterioro. Tengo entendido que esto es tan solo una solicitud, la cual comenzará la averiguación sobre si cumplo o no con los requisitos para una acomodación razonable. También tengo entendido que puede ser que mi vivienda no resulte afectada inmediatamente mientras se esté considerando mi solicitud. Tendré el derecho de presentar una queja mediante el proceso de quejas para infractores de la ley si no estoy de acuerdo con la decisión tomada con respecto a esta solicitud de acomodación razonable. **Nota: El departamento correspondiente del personal de seguridad pública puede asistir a los infractores de la ley a llenar este formulario.**

Soy/tengo (Manifieste su deterioro)

No puedo (Describa su limitación o incapacidad)

Acomodación solicitada:

Una solicitud de acomodación puede ser negada si el personal de Prisiones no la puede evaluar adecuadamente por no poder leer O por no tener acceso a información de salud relevante a la acomodación que usted esté buscando. Su información de salud es privada y no puede ser divulgada al personal de la prisión sin su permiso. ¿Desea proporcionar una renunciación que permita al personal de Prisiones obtener información de salud del Servicio de Salud de Prisiones o de cualquier otro personal de atención médica, médico privado o clínica, a fin de evaluar su solicitud de acomodación? Usted puede revocar su renuncia en cualquier momento proporcionando al personal de Prisiones un aviso por escrito de la revocación.

de **Deseo** proporcionar al personal de Prisiones acceso a mi información de salud para el limitado fin que el Servicio de Salud de Prisiones evalúe mi solicitud de acomodación.

No deseo proporcionar al personal de Prisiones acceso a mi información de salud para que se evalúe mi solicitud de acomodación. Tengo entendido que si el personal de Prisiones determina que mi solicitud no puede ser evaluada adecuadamente sin acceso a mi información de salud, mi solicitud de acomodación podría ser negada por esta razón.

Firma del infractor de la ley:

Fecha:

El personal que acepte/ayude a rellenar esta solicitud debe enviar este formulario al administrador de ADA de la instalación para su determinación.

Staff Name/ Rank/Title (Print):

Staff Signature:

Date:

Original to: Facility ADA Coordinator; Copy to: Offender.

Offender Name _____

Offender # _____

Unit # _____

File: Offender Health Record

DC-746(S) (Revised 03/21)



**Departamento de Seguridad Pública de Carolina del Norte División
de Correccionales/Prisiones para Adultos**

**SOLICITUD DE ACOMODACIÓN RAZONABLE
FORMULARIO DE DETERMINACIÓN**

Determinación del administrador de ADA de instalación o Prisiones:

Aprobada Negada Modificada Iniciales: _____ Fecha : _____

Acomodación particular proporcionada:

Explicación de modificación o negativa (si corresponde):

*Los infractores de la ley tienen el derecho de presentar una queja mediante el proceso de quejas para presos si no están de acuerdo con la decisión tomada con respecto a una solicitud de acomodación razonable.

Explicación de la tardanza, de haberla:

Facility ADA Coordinator's Signature:

Date:

Offender's Signature:

Date:

Prisons ADA Coordinator's Signature:

Date:

**Served upon offender by:
Staff Name/ Rank/Title (Print):**

Staff Signature:

Date Served: _____

Completed/Signed Original to Offender Health Record.

Copies: Offender, Facility DIB CM, Facility ADA Coordinator, & Prisons ADA Coordinator.

Offender Name _____

Offender # _____

Unit # _____

File: Offender Health Record

DC-746(S) (Revised 03/21)