



POLICY STATEMENT
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject: Community Corrections Resident Legal		Policy Number: BCC-ADM 005
Date of Issue: August 24, 2015	Authority: Signature on File John E. Wetzel	Effective Date: October 6, 2015

I. AUTHORITY

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

II. APPLICABILITY

This policy is applicable to all facilities operated under the jurisdiction of, or conducting business with the Department of Corrections, Department employees, volunteers, contract personnel, visitors and inmates.

III. POLICY

It is the policy of the Department to establish procedures for a community corrections resident to request a reasonable accommodation for a qualified disability that affects a major life activity and for facilities under the authority of the Department to provide reasonable accommodations as outlined.

IV. PROCEDURES

All applicable procedures are contained in the procedures manual that accompanies this policy document.

V. SUSPENSION DURING AN EMERGENCY

In an emergency or extended disruption of normal facility operation, the Secretary/designee may suspend any provision or section of this policy for a specific period.

VI. RIGHTS UNDER THIS POLICY

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

VII. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY

A. Release of Information

1. Policy

This policy document is public information and may be released upon request.

2. Confidential Procedures (if applicable)

Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Secretary of Corrections/designee. Confidential procedures may be released to any Department of Corrections employee on an as needed basis.

B. Distribution of Policy

1. General Distribution

The Department of Corrections' policy and procedures shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis. Distribution of confidential procedures to other individuals and/or agencies is subject to the approval of the Secretary of Corrections/designee.

2. Distribution to Staff

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of the policy and procedures either in hard copy or via email, whichever is most appropriate.

VIII. SUPERSEDED POLICY AND CROSS REFERENCE

A. Superseded Policy

1. Department Policy

This document establishes policy and procedure on this subject.

2. Facility Policy and Procedures

This document supersedes all facility policy and procedures on this subject.

B. Cross Reference(s)

1. Administrative Manuals

2. ACA Standards

a. Adult Correctional Institutions: None

b. Adult Community Residential Services: 4-ACRS-6A-04-1, 4-ACRS-6A-04, 4-ACRS-6A-04-1, 4-ACRS-6A-04-2, 4-ACRS-6B-01

c. Correctional Training Academies: None

3. PREA Standards

115.216



PROCEDURES MANUAL
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Release of Information:

Policy Document: This policy document is public information and may be released upon request.

Procedures Manual: The procedures manual for this policy may be released in its entirety or in part, with the prior approval of the Secretary/designee. Unless prior approval of the Secretary/designee has been obtained, this manual or parts thereof may be released to any Department employee on an as needed basis only.

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Section 1 – Reasonable Accommodations

A. Placement

1. No resident shall be subject to discrimination based on their actual or perceived race, religion, national origin, gender, disability, political views, gender identity, or sexual orientation.¹
2. Individuals with disabilities shall be assigned to a Community Corrections Center (CCC) or Community Contract Facility (CCF) that provides reasonable accommodations according to the individual needs of the resident; provides for his/her safety and security; provides for reintegration with residents; and provides access to programs and services. This includes individuals diagnosed as mentally and/or physically impaired.²
3. To ensure that an individual with a disability is referred to the appropriate facility, the Bureau of Community Corrections (BCC) Referral Unit will maintain an updated list of facilities that can reasonably accommodate offenders with disabilities.
 - a. The Facility Director/designee at each site will evaluate the facility's ability to receive and retain residents with a qualified disability in compliance with this section.
 - b. The Regional Director/designee will review the assessment, determine if the facility meets the standards, and forward this information to the Referral Unit.
 - c. The Referral Unit will maintain a list of approved sites to be used for placement decisions.
4. Facilities that cannot make reasonable accommodations should not receive residents with qualified disabilities.
5. The Facility Director/designee shall ensure an updated roster, listing each resident and his/her qualified disability, is provided to the control station for use in the event of an emergency.
6. A resident with a qualified disability shall be transferred to another facility, as soon as possible if:
 - a. his/her condition deteriorates;
 - b. he/she has been inadvertently placed at a facility that cannot accommodate the disability;
 - c. he/she has been diagnosed with a disability while at the facility, and the facility cannot accommodate the disability; or

¹ 4-ACRS-6B-01

² 4-ACRS-6A-04

- d. if an identified security concern exists.
- 7. The transfer of any resident with a qualified disability must be approved by the Regional Director/designee.
- 8. Materials submitted requesting the transfer must clearly indicate the qualified disability and include the level of accommodation and resulting services that are required.

B. Americans with Disabilities Act of 1990

This section establishes procedures for providing a disabled resident with housing in a manner that provides for safety and security, as well as accessibility to programs and activities.

- 1. It is necessary that both staff and visitors with disabilities have access to and can use areas that are accessible to the public.
- 2. Facilities shall be designed to allow access to appropriate areas of the facility by individuals with disabilities, including staff, residents, and visitors.
- 3. Facilities shall ensure education, equipment, and facilities, as well as the support necessary for residents with disabilities to perform self-care and personal hygiene in a reasonably private environment are provided.³
- 4. Appropriately-trained individuals shall be available to assist disabled residents who cannot otherwise perform basic life functions.⁴
- 5. For those facilities with limited access, space shall be made available in accessible areas for staff, residents, and visitors.
- 6. Where existing facilities cannot provide site access, due to its physical plant or other obstacles, a facility in the area shall be used for that accessibility.
- 7. The Deputy Director for Facilities Management (DDFM) shall work with the Bureau of Real Estate (CCCs) or Contracting Agency (CCFs) to assure modification of existing physical plants to provide accessibility to the greatest extent possible.

³ 4-ACRS-6A-04-2

⁴ 4-ACRS-6A-04-1

C. Access to Counsel/Courts

The Facility Director/designee shall ensure staff and residents have access to an appropriately trained and qualified individual who is educated in the problems and challenges faced by residents with physical and/or mental impairments, programs designed to educate and assist residents, and all legal requirements for the protection of residents with disabilities.⁵

D. Language Accommodations

1. Written materials and training will be delivered in alternative formats that accommodate the resident's disability or the information will be delivered through alternative methods, such as reading it to the resident or communicating through an interpreter. This is to ensure the resident's understanding of facility rules, regulations, and direction as well as information related to sexual abuse prevention, detection, and response. **(§115.216 [a])**
2. The Facility Director/designee shall ensure only staff members or qualified contractors provide translation for residents. If the translation involves a grievance or abuse investigation, staff involved may not provide translation for the resident.
3. At no time will a resident be permitted to act as a translator or assistant for sexual abuse or physical abuse related interviews, reporting, etc. **(§115.216 [c])**
4. If a bi-lingual staff member is not available, translation services shall be coordinated by the Facility Director/designee utilizing the Department's contracted provider. The Bureau Office will provide direction and contact information to the facility.
5. A **DC-121, Part 3-BCC, Employee Report of Extraordinary Occurrence** shall be completed and submitted to the Facility Director/designee and Contract Facility Coordinator (CFC) (as applicable) when Department contracted interpreter services are used.

⁵ 4-ACRS-6A-01-1

Auxiliary Aids and Services (as defined in 42 USCS §12102(1)) – The term “auxiliary aids and services” includes certified interpreters or other effective methods of making aurally delivered materials available to individuals who are hard of hearing, qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments, acquisition or modification of equipment or devices, and other similar services and actions.

Braille – A system of writing and printing for the visually impaired, in which varied arrangements or raised dots representing letters and numerals can be identified by touch.

Community Confinement Facility – A community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours (all CCCs and CCFs fall into this category).

Community Corrections Center (CCC) – A residential correctional facility operated by the Pennsylvania Department of Corrections.

Community Contract Facility (CCF) – A privately owned and operated residential correctional facility contracted with the Pennsylvania Department of Corrections.

Contract Agency – Refers to the entity that oversees the financial and procedural operations of a Community Contract Facility (CCF).

Contractor – A person who provides supplies or services on a recurring basis pursuant to a contractual agreement with the Agency.

Deaf – A condition in which perceivable sounds (including speech) have no meaning for ordinary life purposes. Visual communication, such as sign language, writing, text reading, and speech reading, is necessary.

Department – The Pennsylvania Department of Corrections.

Direct Threat – A significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

Disability (as defined in 42 USCS §12102(2); 28 CFR §35.104) – A person with a qualified disability is defined as an individual who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such an impairment; and/or
3. is perceived or regarded as having such an impairment.

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, and psychoactive substance abuse disorders resulting from current illegal use of drugs, homosexuality or bisexuality.

Facility – A place, institution, building (or part thereof), set of buildings, structure, or area that is used by the Department for the confinement of individuals. This term may be used interchangeably with “Center” throughout this policy and refer to a CCC or CCF.

Facility Director/Designee – The Director of a CCC or CCF or their management designee. This term may be used interchangeably with “Center Director/designee” throughout this policy.

Hard of Hearing – A condition in which there is some degree of hearing loss varying from mild, to moderate, to profound. The sense of hearing is partially, but not completely functional for ordinary life purposes.

Intern – An individual approved by the Department to use experience with the Department to further his/her academic or educational pursuits, programs or credentials. The term does not include employees or contractors.

Major Life Activities (as defined in 28 CFR §35.104) – Includes such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Permanent Vision Impairment – Individuals who are permanently blind or have a vision impairment not correctable to central vision acuity of less than 20/20, even with corrective lenses.

Physical or Mental Impairments (which affect a major life activity) (as defined in 28 CFR §35.104) – Physical or mental impairments include 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. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase physical or mental impairment does not include homosexuality or bisexuality.

Qualified Individual with Disability (as defined in 28 CFR §35.104) – An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal or 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.

Qualified Interpreter (as defined in 28 CFR §35.104) – Refers to an interpreter for the deaf or hard of hearing who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. A list of such interpreters may be obtained from the Pennsylvania Office for the Deaf and Hard of Hearing. Use of a certified interpreter shall be in accordance with **Management Directive 205.32, Hiring Sign Language Interpreters and Translators**.

Reasonable Accommodation (condensed from 29 CFR §1630.2) – A modification or adjustment to a job or work environment that will enable a qualified inmate with a disability to perform all the essential job functions and which does not create an undue hardship for the Department.

Record of a Mental/Physical Impairment (as defined in 28 CFR §35.104) – These procedures protect not only those individuals with disabilities who actually have a mental/physical impairment that substantially limits a major life activity, but also those with a record of such an impairment. This protected group includes a person who has a history of an impairment that substantially limits a major life activity but who has recovered from the impairment. Examples of individuals who have a history of impairment are persons who have prior histories of mental or emotional illness, drug addiction, alcoholism, heart disease, or cancer. Persons who have been wrongly classified as having a mental impairment include persons who have been erroneously diagnosed as mentally retarded or mentally ill.

Regarded as Having a Mental/Physical Impairment (as defined in 28 CFR §35.104) – These procedures also protect certain persons who are regarded by a public entity as having a mental/physical impairment that substantially limits a major life activity, whether or not that person actually has an impairment. Some examples of situations covered by this category are:

1. An individual who has a physical or mental impairment that does not substantially limit major life activities, but who is treated as if the impairment does substantially limit a major life activity.
2. An individual who has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards the impairment.
3. An individual who has no impairments but who is treated by a public entity as having an impairment that substantially limits a major life activity.

Resident – Any person assigned, confined or detained in a community confinement facility. Responsibility, whose placement is funded by the Department (including parolees).

Staff – An employee of the Department or an employee of a Community Contract Facility. The word staff and employee may be used interchangeably throughout this policy.

Undue Hardship (condensed from 29 CFR §1630.2(p)) – An action requiring significant difficulty or expense in the implementation of an accommodation or which would result in a threat to facility security.

Volunteer – An individual who donates time and effort on a recurring basis to enhance the activities and programs of the facility.