



INTRODUCTION

The Americans with Disabilities Act (ADA) necessitates reasonable accommodations to individuals with disabilities. Many state judiciaries publish ADA rules, procedures, and documents on their websites to ensure ADA compliance. Most of these judiciaries also outline procedures in the event that an individual with a disability must identify nonconformance with ADA accommodations requirements. However, until 2022, the North Dakota court system had published no such information and had not yet identified a meaningful process for providing reasonable accommodations in a courtroom setting for individuals with disabilities.

BACKGROUND

In 2020, a child with Autism was asked to testify as a witness in a criminal court proceeding for a violent act committed against her. Despite a request by the child’s guardian to make reasonable accommodations for the child’s disability, the child was denied a relaxed, unintimidating setting to account for the child’s age and disability. Instead, the child was questioned simultaneously and intentionally agitated by multiple professionals. By all appearances to the child and the guardian, the child’s disability was taken advantage of in order to obtain desired testimony. Professionals involved in the case were admittedly unfamiliar with the ADA and the necessity to provide reasonable accommodations.

At the time, this story was just one example of the North Dakota judicial system’s inadequacies in affording people with disabilities necessary modifications so that they may participate in a court setting to the same extent as people without disabilities.

PREVALENCE OF VICTIMIZATION OF PEOPLE WITH DISABILITIES, AND WHY NORTH DAKOTA SHOULD CARE

Courts often consider wheelchair ramps and hearing assistance services to be sufficient accommodations to people with disabilities. While physical disability accommodations are a step in the right direction, accommodations cannot be limited to assisting individuals with physical disabilities who require access to a court building. Accommodations must provide appropriate adaptations for individuals with other disabilities and for those who have been victimized under criminal circumstances.

Violent victimization is almost three (3) times more likely to be perpetrated against those with disabilities than those without.¹ Among disability types, people with cognitive disabilities are the most likely to be victims of violent crime.² In 2016, the U.S. Department of Justice Bureau of Justice Statistics reported that “of the total number of rape/sexual assault victimizations reported, an estimated 69% were committed against persons with multiple disability types.”³

As provided in the example above, and despite the prevalence of violence against individuals with disabilities, some state courts have failed to make good on their obligation to provide across-the-board policies and promises to provide necessary accommodations to individuals with disabilities in a variety of settings.

¹ “Responding to Survivors With Autism Spectrum Disorders: An Overview for Sexual Assault Advocates.” National Sexual Violence Resource Center, p. 1 (2018).

² Id.

³ Id. at 2.

EXAMPLES OF ACCOMMODATIONS

Accommodations	
<ul style="list-style-type: none"> • Qualified sign language interpreters • Assistive listening devices • Computer transcription services • Documents in Braille • Magnification devices • Assistance with filling out forms • Use of a service animal • Remote appearances or relocation of a proceeding to an accessible courtroom • Comfort items 	<ul style="list-style-type: none"> • Appropriate communication: <ol style="list-style-type: none"> a. Ask about the person’s preferred communication method(s); b. Speak slowly and wait for a response; c. Connect with caregivers and significant others to request input, where appropriate; d. Meet privately, without others; e. Acknowledge the person’s personal agency; f. Communicate regarding sensory concerns and avoid them.⁴

EXAMPLES OF SOURCES DESCRIBING MODIFICATIONS, PROVIDED BY OTHER STATE JUDICIARIES

The following table provides a listing of states with judicial branches that publish clear and accessible ADA accommodation information. Neither the states nor the accommodations listed are necessarily exhaustive. Prior to 2022, North Dakota courts did not have information related to accommodations for individuals with disabilities.

State	Website	Accommodations and Information
AZ	www.clerkofcourt.maricopa.gov	<ol style="list-style-type: none"> 1. Accommodations web page; 2. ADA Accommodation Request Form; 3. Outlined grievance procedure; and 4. Contact information for ADA Coordinator.
CA	www.saccourt.ca.gov (Also available on many individual county courts’ web pages)	<ol style="list-style-type: none"> 1. Accommodations web page; and 2. Accommodations request form.
CO	www.courts.state.co.us	<ol style="list-style-type: none"> 1. ADA Accommodations web page; 2. ADA Accommodation Request Form; 3. ADA Grievance Form; and 4. Contact information for ADA Coordinator(s).
CT	www.jud.ct.gov	<ol style="list-style-type: none"> 1. ADA Accommodations web page; 2. Directions to request an accommodation; and

⁴ Id. at 4-7.

		3. Contact information for ADA Contact Persons for each CT city.
HI	www.courts.state.hi.us	1. Accommodations web page; 2. Contact information for Disability Accommodations Coordinators; and 3. Disability Accommodation Request Form.
IN	www.in.gov	1. ADA Accommodations web page; and 2. Instructions to contact and request accommodation.
MA	www.mass.gov	1. ADA Accommodations web page; 2. ADA Accommodation Request Form(s); 3. Instructions on how to find ADA Coordinator(s); and 4. Outlined grievance procedure(s).
MN	www.mncourts.gov	1. ADA Accommodations web page; 2. ADA Accommodation request form; and 3. Outlined grievance procedure.
ND*	www.ndcourts.gov	1. ADA Accommodations web page; and 2. ADA Accommodation request form.
NJ	www.njcourts.gov	1. ADA Accommodations web page; 2. Procedures for Access to Courts; 3. Contact information for ADA coordinator(s); and 4. Appeals Form.
NY	ww2.nycourts.gov	1. Local ADA Information by Courthouse page; 2. Instructions for ADA Accommodation Requests; 3. Request for Reconsideration Form; and 4. Contact information for NY ADA Coordinator.
VA	www.vacourts.gov	1. Ada Accommodations web page; 2. ADA Accommodation Request Form and additional request forms specific to disability; 3. Outlined grievance procedure; and 4. Contact information for ADA Coordinator.

* As a result of prompts by Protection & Advocacy in 2021 and 2022, the North Dakota State judiciary branch updated its court system website to include an ADA Accommodation Request Form. The web page and form may be found here: [North Dakota Court System - Americans with Disabilities Act \(ADA\) Accommodation Requests \(ndcourts.gov\)](http://www.ndcourts.gov)

CONCLUSION

Under the ADA, the North Dakota judiciary has an obligation to provide clear, concise, and accessible information to individuals with disabilities, particularly as it relates to accommodations in a courtroom setting. These accommodations should be provided for all individuals with disabilities. The Bench should be willing to receive and distribute compliance information to judges, State’s Attorneys, public and state-contracted defense attorneys, clerks of court, and other court staff to ensure that all individuals with all types of disabilities have access to equitable treatment in the courtroom, including clear physical access and appropriate communications and interactions. Such information includes but is not limited to fact sheets for review by the Bench, ADA Accommodation Request and Grievance Procedure forms, and accessibility and accommodation information made available on www.ndcourts.gov. At present, the North Dakota Court System has published an ADA Accommodation Request Form with contact information for all district courts.