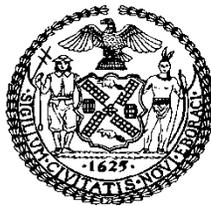


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**THE COUNCIL OF THE CITY OF NEW YORK**

**Briefing Paper of the Governmental Affairs and Human Services Division**

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**COMMITTEE ON COURTS & LEGAL SERVICES**

Hon. Rory Lancman, Chair

**COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITY, ALCOHOLISM,  
SUBSTANCE ABUSE & DISABILITY SERVICES**

Hon. Andrew Cohen, Chair

**June 23, 2016**

**Oversight: Examining Court Accessibility in New York City Courts**

**I. INTRODUCTION**

On June 23, 2016, the Committee on Courts & Legal Services, chaired by Council Member Rory Lancman, and the Committee on Mental Health, Developmental Disability, Alcoholism, Substance Abuse, and Disability Services, chaired by Council Member Andrew Cohen, will hold a hearing to examine whether court houses, including holding cells and bathroom facilities utilized by criminal defendants, prisoners, and the public, are accessible. Those expected to testify include representatives from the New York State Office of Court Administration, the Mayor’s Office of Criminal Justice, legal service providers, and advocates.

## **II. BACKGROUND**

In New York City, it is estimated that there are over 800,000 individuals living and working with disabilities.<sup>1</sup> According to the Center for the Disabled New York, many disabled New Yorkers have a combination of multiple disabilities.<sup>2</sup> Approximately 185,379 New Yorkers have hearing difficulties, 184,886 have vision trouble including blindness, 344,136 have cognitive disabilities, 547,593 have ambulatory or permanent physical disability, 232,531 experience difficulties with self-care, and another 383,658 have independent living issues.<sup>3</sup> The Mayor’s Office for People with Disabilities estimates that nearly 90,000 New Yorkers use

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<sup>1</sup> “Policy Report: Improving Voting Access for New Yorkers with Disabilities” New York City Public Advocate Letitia James and The Center for Independence of the Disabled in New York July 2014 available at <http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/publicadvocate-annualreport-votingdisabilities.pdf> (last visited June 17, 2016)

<sup>2</sup> Dooha, Susan M. “ADA at 25: Many Bridges to Cross” Center for Independence of the Disabled New York 2015 available at [http://www.cidny.org/resources/CIDNY-ADA25-Many%20Bridges\\_to-Cross.pdf](http://www.cidny.org/resources/CIDNY-ADA25-Many%20Bridges_to-Cross.pdf) (last visited June 17, 2016)

<sup>3</sup> Dooha, Susan M. “ADA at 25: Many Bridges to Cross” Center for Independence of the Disabled New York 2015 available at [http://www.cidny.org/resources/CIDNY-ADA25-Many%20Bridges\\_to-Cross.pdf](http://www.cidny.org/resources/CIDNY-ADA25-Many%20Bridges_to-Cross.pdf) (last visited June 17, 2016)

wheelchairs, and some ten thousand others have mobility impairments.<sup>4</sup> Many of these New Yorkers require access to court facilities and various forms of reasonable accommodations.<sup>5</sup> This July marks the 26<sup>th</sup> anniversary of the passage of the Americans with Disabilities Act (“ADA”), a wide-ranging civil rights law that affords protections against discrimination to Americans with disabilities so that “all Americans, regardless of their disability or abilities, are treated fairly and decently, as coequal in all aspects of American life.”<sup>6</sup> The ADA has advanced the goals of American society for persons with disabilities, as it encourages “equality of opportunity, full participation, independent living, and economic sufficiency”.<sup>7</sup> Title II of the ADA established accessibility regulations for public entities, such as courts, and includes all programs, activities, and services provided or operated by State and local governments.<sup>8</sup> While the ADA has improved access for people with disabilities, many barriers still exist.

The New York Lawyers for Public Interest’s (“NYLPI”) report “Accessible Justice, Ensuring Equal Access to Courthouses for People with Disabilities,” details the accessibility barriers persons with mobility impairments encounter at courthouses in New York City, which deny them meaningful access to justice.<sup>9</sup> Some of the accessibility barriers documented within this report included: poorly placed or inaccurate signage for entrances and bathrooms; lack of

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<sup>4</sup> “Ensuring Equal Access to Court Houses for People with Disabilities” New York Lawyers for the Public Interest March 2015 available at <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf>

<sup>5</sup> *Id.* at 5

<sup>6</sup> 136 CONG. Rec. S9684-03 (July 13, 1990), 1990 WL 97306, as noted in New York Lawyers for the Public Interest report, Accessible Justice, Ensuring Equal Access to Courthouses for People with Disabilities, Navin Pant, Kelly McAnnany, and Maureen Belluscio, published March 2015.

<sup>7</sup> Robert Silverstein, *Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy*, 85 Iowa L. Rev 1691, 1697-987 (2000), quoting 42 U.S.C. section 12101(a)(8) (1994). Available at [http://www.ncwd-youth.info/assets/framework/silverstein\\_framework.pdf](http://www.ncwd-youth.info/assets/framework/silverstein_framework.pdf) (last visited June 17, 2016)

<sup>8</sup> “Ensuring Equal Access to Court Houses for People with Disabilities” New York Lawyers for the Public Interest March 2015 available at <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf>

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<sup>9</sup> “Ensuring Equal Access to Court Houses for People with Disabilities” New York Lawyers for the Public Interest March 2015 available at <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf>

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accessible bathrooms for both the public and criminal defendants in holding pens; inaccessible court room entrances, counsel tables, jury and witness boxes; and lack of elevators or other means by which a criminal defendant who uses a wheelchair can be moved to a courtroom from a holding pen.<sup>10</sup> The range of persons affected by inaccessible courthouses includes jurors, criminal defendants, litigants, attorneys and court employees, including judges, clerks and court reporters.<sup>11</sup>

### **III. LAWS THAT GOVERN COURT ACCESS**

Within our judicial system, there are rights that are recognized by the Supreme Court as fundamental.<sup>12</sup> One of these rights is the ability for all individuals to have equal access to the country's justice system. In 1990, The Americans with Disabilities Act (ADA) was enacted to ensure that the citizens of this country, including those with disabilities, have equal opportunities in a variety of areas, including the ability to participate in this country's legal system. In 2004, the Supreme Court in discussing the applicability of the ADA to a disabled person's access to courts and court services stated that, "the failure to accommodate a person with disabilities will often have the same practical effect as outright exclusion" and therefore required States to enact appropriate legislation that would ensure that all barriers to court accessibility would be removed."<sup>13</sup> In this regard, New York State enacted the Human Rights Law that ensures that persons falling into a particular class, including those with disabilities, have equal access to

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<sup>10</sup> "Ensuring Equal Access to Court Houses for People with Disabilities" New York Lawyers for the Public Interest March 2015 available at <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf> pg 3

<sup>11</sup> *Id.* at p.4

<sup>12</sup> [ipdigital.usembassy.com](http://ipdigital.usembassy.com)- In Tennessee v Lane, 541 U.S. 509 (2004) - John Paul Stevens held that Title II was constitutional "as it applied to the class of cases implicating the fundamental right of access to the courts

<sup>13</sup> 541 U.S. 509, 124 S.Ct. 1978 (2004)

justice. This law requires non-discrimination on the basis of disability in public accommodations, including those owned by state and local governmental entities.<sup>14</sup> Therefore, courts and other public buildings including parks, libraries, museums, etc., and any attendant services that constitute public accommodations, such as food service, camp grounds, and other accommodations open to the public, must not deny service to an individual because of a disability, and must provide accommodation and accessibility pursuant to the statute.<sup>15</sup> Similarly, New York City's local Human Rights Law (amended by the Local Civil Rights Restoration Act of 2005)<sup>16</sup> contains protections for disabled individuals within the courthouses of New York City by including courthouses in the Administrative Code definition of public accommodations.<sup>17</sup>

Furthermore, section 35.107 of the Code of Federal Regulation (CFR), requires that a person be designated as an ADA coordinator in any state entity that employs 50 or more persons, to ensure compliance with state and federal requirements. It is the coordinator's responsibility to investigate any non-compliance with the requirements of the Act and rectify any such issues.

#### **IV. COURTS ACCOMODATION PROCESS**

According to the New York State Unified Court System, courts are committed to fully complying with the Americans with Disabilities Act ("ADA") by providing services, programs, and activities in ways that assure equal and full accessibility. In addition to the Statewide ADA Coordinator, who is responsible for assisting courts in assuring their accessibility, each

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<sup>14</sup> Executive law Article 15

<sup>15</sup> Executive law Article 15 (c), (d) and (e).

<sup>16</sup> [http://www.srz.com/Accommodations\\_for\\_Disabilities\\_Under\\_the\\_New\\_York\\_City\\_Human\\_Rights\\_Law/](http://www.srz.com/Accommodations_for_Disabilities_Under_the_New_York_City_Human_Rights_Law/)

<sup>17</sup> Administrative Code Title 8 (§8-107 (4))

courthouse in New York City has their own ADA liaison that facilitates access to court services and accommodations.<sup>18</sup> Courts can make reasonable modifications in practices and procedures, and/or provide auxiliary aids such as assistive listening devices, qualified American Sign Language and other types of interpreters, real time computer-aided transcription services and qualified readers, in large print, and electronic and audio forms of Braille.<sup>19</sup> Some requests cannot be granted as an ADA accommodation for various reasons including court policies. Requests that cannot be granted include legal counsel or legal advice, transportation to or from the courthouse, an official transcript of a court proceeding, personal devices such as wheelchairs, hearing aids, or prescription glasses, or personal medical or attendant care.<sup>20</sup> Additionally, Court administrators cannot grant requests that impact a “judge’s handling of pending court proceedings”, such as requests for extension of time, a change of venue, or participation in court proceedings by telephone or video conferencing.<sup>21</sup> These types of accommodation requests must be decided by the Judge or judicial officer presiding over the specific case.

To request an accommodation, court users can contact the ADA liaison associated with the specific court they will be visiting, and in-person, in writing, by letter, email or fax, or over the telephone.<sup>22</sup> The directory of ADA liaisons and their corresponding courthouses can be found online.<sup>23</sup> Court users are asked to make requests well in advanced of their court appearance, and

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<sup>18</sup> See “About the Americans with Disabilities Act” New York State Unified Court System available at <https://www.nycourts.gov/accessibility/> (last visited June 17, 2016)

<sup>19</sup> See “How Court Users Can Obtain ADA Accommodations” New York State Unified Court System available at [https://www.nycourts.gov/accessibility/CourtUsers\\_Guidelines.shtml](https://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml) (last visited June 17, 2016)

<sup>20</sup> See “Types of Accommodations the Court Can Make” New York State Unified Court System available at [https://www.nycourts.gov/accessibility/CourtUsers\\_Guidelines.shtml](https://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml) (last visited June 17, 2016)

<sup>21</sup> Id.

<sup>22</sup> See “How to Request an Accommodation” New York State Unified Court System available at [https://www.nycourts.gov/accessibility/CourtUsers\\_Guidelines.shtml](https://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml) (last visited June 17, 2016)

<sup>23</sup> See “NYS Court Local ADA Liaisons Directory” New York State Unified Court System available at <https://www.nycourts.gov/accessibility/listbycounty.shtml> (last visited June 17, 2016)

to provide the type of accommodation needed and relevant information regarding the court appearance (ie. court facility address, name of the case, name of the judge, part number, date of appearance(s), and estimated length of the proceeding).<sup>24</sup> While ADA liaisons facilitate these requests, they do not possess the authority to deny a request.<sup>25</sup>

## V. ISSUES & CONCERNS

The New York Lawyers for Public Interest's ("NYLPI") report "Accessible Justice, Ensuring Equal Access to Courthouses for People with Disabilities," details the accessibility barriers persons with mobility impairments encounter at courthouses in New York City. As discussed above, there are minimum accommodations which must be met in order to provide access to courtrooms for individuals with disabilities. All individuals regardless of disability require access to justice and, therefore, access to courthouses.

Of the 21 courtrooms NYLPI visited, all had accessibility barriers, including inaccessible entrances, inaccessible spectator seating and inaccessible jury boxes and witness boxes.<sup>26</sup> According to NYLPI, eight out of the ten courthouses they visited had insufficient or inaccurate signage regarding wheelchair-accessible entrances and bathrooms.<sup>27</sup> Six out of the ten courthouses had an entrance for individuals with disabilities separate from the main entrance.<sup>28</sup>

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<sup>24</sup> See "How to Request an Accommodation" New York State Unified Court System available at [https://www.nycourts.gov/accessibility/CourtUsers\\_Guidelines.shtml](https://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml) (last visited June 17, 2016)

<sup>25</sup> See "Response to an ADA Accommodation Request" available at [https://www.nycourts.gov/accessibility/CourtUsers\\_Guidelines.shtml](https://www.nycourts.gov/accessibility/CourtUsers_Guidelines.shtml) (last visited June 17, 2016)

<sup>26</sup> "Ensuring Equal Access to Court Houses for People with Disabilities" New York Lawyers for the Public Interest March 2015 available at <http://www.nylpi.org/wp-content/uploads/2015/03/Accessible-Justice-NYLPI-3-23-15.pdf> at 15.

<sup>27</sup> *Id.* at 13.

<sup>28</sup> *Id.* at 14-5.

Five out of these six so-called accessible entrances actually had barriers for accessibility.<sup>29</sup> Additionally, some of the bathrooms that were marked as accessible were not actually accessible.<sup>30</sup>

The NYLPI report also detailed several instances where individuals who use wheelchairs had negative experiences attempting to access a NYC courthouse.<sup>31</sup> Some of the issues included having to be carried up and down several flights of stairs in order to be booked and processed in criminal court, being denied for jury service, and lack of access to a bathroom in a holding pen for criminal defendants.<sup>32</sup> One criminal defendant, Jose Morales, told the NY Daily News that when I am taken to Manhattan Criminal Court, “if the elevators aren’t working the only way they can take us is carrying us. It was dangerous.”<sup>33</sup>

Navin Pant, a staff attorney for NYLPI concluded that “The injustices are found in all different ways and they really add up to a denial of equal access”.<sup>34</sup> The Committees are looking forward to exploring the steps that have been taken in order to make courthouses more accessible for individuals with disabilities since the release of the NYLPI report, as well as what plans are in place to make courthouses more accessible in the future.

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<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 4-5.

<sup>33</sup> “Justice isn’t accessible in many NYC Courts as several lack elevators or have poorly marked entrances: report” New York Daily News March 2015 <http://www.nydailynews.com/new-york/nyc-crime/nyc-courthouses-inaccessible-disabled-people-report-article-1.2160207>

<sup>34</sup> NY Daily News, “Justice isn’t accessible in many NYC Courts as several lack elevators or have poorly marked entrances: report” March 2015 <http://www.nydailynews.com/new-york/nyc-crime/nyc-courthouses-inaccessible-disabled-people-report-article-1.2160207>