

# The Basics of Disability Rights and Public Transportation

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# Introduction

- Basic Understanding of Title II of ADA
- Focus on Fixed Route and Paratransit Transportation Services
- Issues regarding transit stations and bus stops not discussed

# What Is Title II of ADA

(42 U.S.C. §§ 12131-12165)

- A Broad Civil Rights Statute Protecting Rights of Qualified Individuals with Disabilities to Ensure Equal Access to Public Services, including Public Transportation
- ADA is not a Safety Statute

# Under the ADA Public Entities:

- "May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability."
- "Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities".
- "Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result."
- (Source: [ada.gov](http://ada.gov))

# Additional ADA Requirements:

- A Public Entity cannot deny an individual with a disability the use of a fixed route transportation system if the person is capable of using the service.
- A Public Entity must provide vehicles readily accessible and usable by individuals with disabilities, including passengers using wheelchairs.
- A Public Entity that offers a fixed route system must also provide to its customers who are unable to use the fixed route system a complementary paratransit service which is comparable to the level of service of the fixed route system.

# What is Unruh Act

(California Civil Code § 51 et seq.)

- California's Civil Rights Statute
- Prohibits discrimination based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation
- Specifically incorporates the ADA
- Has remedies above and beyond the ADA

# Who is Protected by Title II

- Qualified Individuals with Disabilities
  - A “qualified individual with a disability” is one who meets the essential requirements for the program or activity offered by a Public Entity:  
For example:
    - Rider of Bus Service
    - Rider of Light Rail Service
    - Rider of Paratransit Service

# Definition of “Individuals With Disabilities”

- A “individual with a disability” is a person who:
  - Has a physical or mental impairment that substantially limits a “major life activity”, or
  - Has a record of such impairment (e.g., has had a disability in the past), or
  - Is regarded as having an impairment (e.g., others believe the person is disabled and treats the person as being disabled)



# Physical Impairments

- Examples of physical impairments common to users of public transportation are:
  - Orthopedic
  - Visual
  - Speech and hearing
  - Cerebral palsy
  - Diabetes
  - Heart disease
  - Cancer
  - HIV

# Mental Impairments

- Examples of mental impairments common to users of public transportation are:
  - Mental retardation
  - Emotional illnesses
  - Developmental disabilities
  - Learning disabilities
  - Alcoholism and drug addiction under some limited circumstances

# Denial of Service?

## VIDEO

- Were the ADA and Unruh Act violated?
- Eligibility requirements for use of service allowed?

# Remedies for Violations

- Injunctive Relief
  - Court Order
  - Consent Decree
- Damages
  - Unruh Act has \$4,000 minimum award per violation
  - Unruh Act allows for treble damages per violation
- Attorneys Fees
  - Court's have awarded hourly fees to plaintiffs in excess of \$500/hour

# Who Can Enforce ADA?

- U.S. Department of Justice
- California's Attorney General's Office
- District Attorney
- City Attorney
- Private Individual

# Common Issues in Public Transportation

- Seat Belts
- Origin to Destination Service
- Seating Priority
- Broken Equipment
- Wheelchair lifts
- Driver not understanding requirements
- Passengers with personal needs

# Seat Belt of Fixed Route Bus

## VIDEO

- Were the ADA and Unruh Act violated?
- Could passenger refuse to wear seat belt?

- Seat belts cannot be required of disabled passenger unless all riders on the vehicle are required to wear seat belts
  - Passengers using wheelchairs
  - Ambulatory disabled passengers
- ADA is not Safety Statute
  - How to balance passenger safety versus right to refuse seat belts?
    - Attempt to belt?
    - Encourage use of belt?
    - Document denial?



# Seat Belt on Paratransit Vehicle

## VIDEO

- Were the ADA and Unruh Act violated?
- Did passenger refuse to wear seat belt?
- What could driver have done differently?

# Origin to Destination Service

## VIDEO

- Were the ADA and Unruh Act violated?

- ADA requires paratransit services provide “Origin to Destination” service
- “Origin to Destination” service ensures paratransit passengers are actually able to travel from their point of origin to point of destination
- May need to go beyond “curb to curb” service for some passengers
- However, Public Entity not required to provide service which requires a “fundamental alteration” of the service or which creates an “undue burden”

# Seating Priority

- Fixed Route Bus
  - Crowded Bus
    - Obligation to de-board non-disabled passengers?
  - Non-disabled passenger in priority seat
    - Obligation to require non-disabled passenger to move?
- Light Rail
  - Wheel chair versus bicycle versus passenger's luggage
- Paratransit
  - Shared ride service

# Broken Equipment

- Duty to repair in timely manner
- Denial of Service due to broken equipment
  - Example of wheel chair lift
- Duty to provide alternative service

# Wheelchair Lifts

- Direction of loading
  - Forwards versus backwards
- ADA requirements conflict manufacturer specifications
- Bariatric wheelchairs

# Drivers

- Drivers violate Public Entities' ADA policies
- Better training, supervision, and re-training

# Passengers

- Have personal requirements expect to be met
  - Examples
    - Not wanting to wear seat belt because of oxygen tube
    - Wanting a different drop off location for own convenience
- Prior bad experience
  - Straw that broke camel's back
- Professional Plaintiff



# Conclusion

The Clint Eastwood Experience

# Resources

- Excellent resources available online to answer basic ADA questions include:

[ada.gov](http://ada.gov)

[dot.gov](http://dot.gov)

[fta.gov](http://fta.gov)