



*The Protection and Advocacy System for South Carolina*

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## FACT SHEET

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### Section 504 and Rights of Prisoners

#### ***What is Section 504 of the Rehabilitation Act of 1973?***

Section 504 of the Rehabilitation Act of 1973 (Section 504)<sup>1</sup> is a federal law that makes it unlawful for any program or activity that gets federal money to discriminate because of a person's disability. The SC Department of Corrections (SCDC) is covered by this law.

Section 504 also states that a **person with a disability, if qualified for a service or benefit** should be given **reasonable accommodations** so he or she can get that service or benefit. However, if SCDC can show that making the change in procedures would impose an **undue hardship** on the prison, it does not have to give the accommodation.

#### **Section 504 Definitions:**

**PERSON WITH A DISABILITY:** Any person who:

- Has a physical or mental impairment<sup>2</sup> which substantially limits one or more major life activities,<sup>3</sup>
- Has a record of such an impairment, or
- Is regarded as having such impairment.

**QUALIFIED PERSON WITH A DISABILITY:** A person with a disability who meets the basic eligibility requirements for a program or service. Before you have a right to ask for an accommodation because of your disability, you need to meet the general requirements for the program or service you want.

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<sup>1</sup> 29 U.S. Code § 794.

<sup>2</sup> "Impairments" may include hearing and vision problems, mental illness, intellectual disability, and other disabilities.

<sup>3</sup> "Major Life Activities" may include (but are not limited to) seeing, hearing, working, walking, breathing, speaking, and learning.

**REASONABLE ACCOMMODATION:** A change that allows someone with a disability to fully participate in the program or activity. If you are in a training program, but have trouble reading because of poor eyesight, an accommodation might be getting you books with big print or having someone read the book to you.

**UNDUE HARDSHIP:** This is determined on a case-by-case basis based on three factors:

- The size of the program or activity including number of employees, type of facility, and size of budget;
- The type of operation; and
- The nature and cost of the accommodation needed.<sup>4</sup>

***How does Section 504 protect a prisoner against disability discrimination?***

Section 504 makes it unlawful to discriminate against inmates with disabilities. This includes inmates who use wheelchairs, scooters, walkers, or other mobility devices. It also includes inmates who have mental health or cognitive disabilities. All parts of law enforcement and correctional services are covered by 504 including prison facilities, employment, transportation, and other activities, programs, and services.

***Does Section 504 guarantee that I'll receive health and mental health care?***

- Prisons must provide **essential** health and mental health services to all inmates. You have a constitutional right to **necessary** treatment.
- This does not mean that you will receive **non-essential** health and mental health services (i.e. services that are not necessary).
- This does not mean that you will automatically receive FREE health or mental health services in prison. You may have to pay for some service.
- Please note that **Medicaid, Medicare** and the **Veterans Administration** do NOT pay for health or mental health services in prison.

***What are examples of how Section 504 protects an inmate's right to equal access to facilities, programs and services?***

- Use of prison showers and toilets, even if you use a wheelchair,
- Protection from injuries if you have seizures and need a low bunk to avoid serious injury from a fall,
- Sign Language interpreters for disciplinary or classification hearings,
- Access to education and vocational programs that are at the prison,
- Medical supplies and devices (wheel chairs, canes, etc.),
- Access to dining halls, visiting and recreation areas, or library.

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<sup>4</sup> "Undue Hardship" may result from accommodations that are excessively expensive, excessively time-consuming, or create security or safety risks in the prison.

***If I think I have been discriminated against BECAUSE of my disability, what can I do?***

As a prisoner, you have three choices:

1. File an inmate grievance according to the inmate policies and procedures. There is usually a special form for this and you receive instructions when you are admitted to prison. SCDC has a grievance procedure: **SCDC Policy GA-01.12, Inmate Grievance System**. A copy of this policy is available in the Inmate Law Library at each institution. If you need help filing your grievance contact your Institutional Grievance Coordinator (IGC).
2. File a complaint with the SCDC 504 coordinator. This is the SCDC employee who makes sure SCDC follows the 504 law. You may write a short note or letter to the 504 coordinator. The 504 coordinator **must** give you a prompt and fair answer to your complaint.

SCDC Headquarters  
ATTENTION 504/ADA COORDINATOR  
PO Box 21787  
Columbia, SC 29221-1787

3. File a complaint with the United States Department of Justice (DOJ).  
Office of Justice Programs  
Office for Civil Rights  
U.S. Department of Justice  
810 7th Street, NW  
Washington, DC 20531

The DOJ Complaint Form is attached to this Fact Sheet. It is also available at <http://ojp.gov/about/ocr/complaint.htm>

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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P&A does not discriminate on the basis of disability, race, color, creed, national origin, ethnicity, ancestry, citizenship, age, religion, sex or sexual orientation, veteran status, or any other class protected by law in the provision of its programs or services. Pete Cantrell is P&A's designated coordinator for Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

General June 2015



**COMPLAINT VERIFICATION INFORMATION**

**Your name, address, and telephone number(s):**

**Name, address, and telephone number(s) of person(s) who discriminated against you:**

**Name, address and telephone number(s) of agency or organization involved in your complaint:**

**Are there other persons or organizations involved in this discrimination case?**

**If YES, please give the names, addresses and telephone numbers below:**

NAME	ADDRESS	TELEPHONE
_____	_____	_____
_____	_____	_____

**Which of the following describes the nature of the discrimination involved?**

Race/Color  National Origin  Religion  Sex  Disability  Age  Sexual Orientation  Gender Identity

**Does your charge of discrimination involve:**

a. Your job or seeking employment?	<b>OR</b> b. You using facilities or someone providing services/protection to you (or others?)
If yes, <b>which of the following apply?</b>	If yes, <b>how?</b>
Hiring	Brutality
Work Assignment	Harassment
Promotion	Language
Demotion	Applying rule/laws differently
Discipline	Access to buildings/programs
Layoff/Recall	Retaliation
Retaliation	Different standards/opportunities/programs
Termination	Segregation
Other (Specify)	Other (specify)

**Which month(s), day(s), and year(s) did the most recent discrimination against you take place?**

Beginning: Month\_\_\_\_ Day\_\_\_\_ Year\_\_\_\_\_

Ending: Month\_\_\_\_ Day \_\_\_\_ Year \_\_\_\_\_

Explain in detail what happened and how you were discriminated against. State who was involved and show how other persons were treated differently from you. (Also, attach any written materials or documentation pertaining to your case.)

Has the opposite sex or have persons of other races, national origin, religions, or disabilities been treated differently from you in this particular matter? \_\_\_\_ If yes, please explain and identify:

Why do you believe this occurred?

What other information do you think might be helpful to our investigation?

If this complaint is resolved to your satisfaction, what remedy do you seek?

Please list below any persons (witnesses, fellow employees, supervisors, or others) whom we might contact for additional information to support or clarify your complaint:

<b>Name</b>	<b>Address</b>	<b>Telephone Number</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have you filed a case or complaint with any of the following? (Check the appropriate items.)

Civil Rights Division, U.S. Dept. of Justice	State or local Human Relations Commission
U.S. Equal Employment Opportunity Commission	State Law Enforcement Planning Agency
Other Federal Agency	Attorney (Note the name and address above)
Federal or State Court	Other (specify)

For any item checked above, please provide the following information:

Name of Agency: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Case or Docket Number: \_\_\_\_\_

Date of Trial or Hearing: \_\_\_\_\_

Location of Agency or court: \_\_\_\_\_

Name of Investigator: \_\_\_\_\_

Status of Case: \_\_\_\_\_

Additional comments: \_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

(Continue any question on additional sheets if necessary)

(Please also complete and submit the Identity Release Statement)

Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7<sup>th</sup> Street. NW  
Washington, D.C. 20531

COMPLAINANT CONSENT/IDENTITY RELEASE FORM

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Complaint number(s): (if known) \_\_\_\_\_

*Please read the information below, check the appropriate box, and sign this form.*

I have read the Notice of Investigatory Uses of Personal Information by the Department of Justice (DOJ). As a complainant, I understand that in the course of an investigation it may become necessary for DOJ to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of DOJ to honor requests under the Freedom of Information Act. I understand that it may be necessary for DOJ to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by DOJ's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by DOJ.

**CONSENT/RELEASE**

CONSENT - I have read and understand the above information and authorize DOJ to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the Department of Justice (DOJ) to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, personal records and medical records. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

CONSENT DENIED - I have read and understand the above information and do not want DOJ to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

# **NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION**

## **NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES**

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by DOJ are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview with DOJ. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

- The laws and regulations which govern DOJ's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under DOJ's jurisdiction, or has asserted rights protected by statutes DOJ enforces.

- Information obtained from the complainant or other individual which is maintained in DOJ's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

*There are two laws governing personal information submitted to any Federal agency, including the Department of Justice (DOJ): The Privacy Act of 1974 (5 U.S.C. § 552a), and the Freedom of Information Act (5 U.S.C. § 552).*

**THE PRIVACY ACT** protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

- DOJ is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients of Federal financial assistance.

DOJ also is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

- Information that DOJ collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. DOJ staff may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. DOJ also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)

- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in DOJ's regulation at 28 C.F.R. Part 16, DOJ will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act. (See below)

- No law requires a complainant to give personal information to DOJ, and no sanctions will be imposed on complainants or other individuals who deny DOJ's request. However, if DOJ fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

- The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of DOJ to exercise authority to exempt systems of records only in compelling cases. DOJ may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a recipient of Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and DOJ in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.

- DOJ does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under FOIA or the Privacy Act. DOJ will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

**THE FREEDOM OF INFORMATION ACT** gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government -not just materials that apply to them personally. DOJ must honor requests under the Freedom of Information Act, with some exceptions. DOJ generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."