

A Report on Texas Service Animal Issues and Proposed Solutions

**Prepared for:
Members of the 86th Texas Legislature**



Texas Governor's Committee on People with Disabilities

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The Committee on People with Disabilities

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INTRODUCTION

This report summarizes information gathered by the Governor's Committee on People with Disabilities (GCPD) on concerns and experiences related to interactions of people with disabilities and businesses, informs on how state and federal laws provide civil rights protections to people with disabilities, and provides guidance to policy makers on making potential changes to state laws.

To assist in the preparation of this report, the GCPD established a workgroup to gather information and develop solutions to address concerns surrounding service animals. Members of the workgroup included a disabled veteran and representatives from:

- ADAPT of Texas
- American Council of the Blind of Texas
- The ARC of Texas
- Criss Cole Rehabilitation Center - Texas Workforce Solutions
- Disability Rights Texas
- National Alliance on Mental Illness
- National Federation of the Blind of Texas
- An individual representing service dog trainer and law enforcement officers
- Southwest ADA Center
- State Bar Disability Issues Committee
- Texas Council on Developmental Disabilities

This report is intended to clarify:

- the difference between the terms "service animal" and "assistance animal";
- how service animals are used and where they are permitted to be used;
- penalties for misrepresenting a dog as a service animal; and
- the challenges faced by people with disabilities and law enforcement.

Finally, this report contains GCPD's recommendations for needed changes in Texas law to address enforcement challenges.

PROBLEM

While the public is accustomed to encounters with service animals in public settings such as a grocery store, restaurant, or shopping center, the laws and regulations governing service and assistance animals are still often misunderstood. For example, there is confusion surrounding relevant terminology: "service animal," "assistance animal," "emotional support animal," and "comfort animal." Further confusion results from the context and setting of the service animal encounter and questions on which laws apply to that setting.

The GCPD regularly receives questions from businesses and individuals concerning service animals: how do I distinguish between a service animal and a pet, may I bring an emotional support animal into a restaurant, when is it proper for a business to eject a service animal, etc. This report is designed to help answer those questions and many others.

Difference Between Service and Assistance Animals

Federal and state laws use the terms "service animal" and "assistance animal" inconsistently, resulting in substantial confusion about the meaning of those terms. Before discussing how those terms have been used in the various laws, this report suggests the following definitions for distinguishing between them.

Service Animals

Service animals are essential in assisting many people with disabilities to fully participate in everyday life. Individuals with disabilities may use service animals for a variety of reasons. Examples of work or tasks performed by service animals may include, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, retrieving items such as medicine or the telephone, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.¹ In general, service animals are allowed in public places.

As will be explained later, various federal and state laws provide different definitions for "service animals." Some laws limit the definition to dogs that are individually trained to do work or perform tasks for the benefit of an

individual with a disability.² Other laws are not necessarily limited to dogs.³ It is important to know which definition will apply in any particular scenario.

Assistance Animals

Assistance animals are also commonly referred to as “emotional support animals” or “comfort animals.” Though some laws⁴ conflate the terms “service animal” and “assistance animal,” they should be considered as two separate categories of animals. Assistance animals may not always enjoy the same level of legal protection as service animals.

An assistance animal functions as a companion which provides comfort and emotional support to its handler. Assistance animals are often used as part of a medical treatment plan, and may help individuals with depression, anxiety, or certain phobias. They may also be used in clinical settings to improve social, emotional, or cognitive functioning.

Service Animal Laws

Federal Law

States may not establish laws regarding service animals or assistance animals that contradict federal law. The following sections describe federal laws regarding service and/or assistance animals:

Americans with Disabilities Act (ADA) Title I

Title I of the ADA⁵ prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. And under the law, an employer may be engaging in unlawful discrimination by not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.

Title I of the ADA does not define or expressly address service or assistance animals, but if an employer has a no-animal policy, a request to bring a service or assistance animal to work may be treated as a request for a reasonable accommodation under the ADA.⁶ However, while the employer is required to consider the request, it is not automatically required to grant the request.⁷ The employer may generally deny such a request if the animal is not needed because of a disability or if it disrupts the workplace. When an employee or prospective employee requests to use a service or assistance

animal at work, the employer usually may request documentation or demonstration showing the need for the animal and that the animal is appropriately trained and will not disrupt the workplace.

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title I of the ADA through a complaint driven process. A complainant may also be entitled to file a civil lawsuit over an alleged violation.

ADA Titles II and III

Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by state and local government entities, while Title III prohibits discrimination on the basis of disability in the activities of places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices).⁸

For purposes of Titles II and III of the ADA, service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.⁹ The work or tasks performed by a service animal must be directly related to the individual's disability. The ADA does not restrict the type of dog breeds that can be service animals.

Under the ADA, state and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. But service animals may be excluded if not house broken or under the handler's control.¹⁰

Under Titles II and III of the ADA, a service animal handler generally may not be asked about the nature or extent of their disability or the qualifications or certifications of the animal, but may be asked two questions to determine whether the animal qualifies as a service animal:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?¹¹

An entity subject to Title II or III of the ADA (covered entity) cannot require proof that the animal in question has been certified, trained, or licensed as a service animal.¹² Such an entity is also not permitted to ask or require an individual with

a disability to pay a surcharge related to the animal, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. But if a covered entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.¹³ The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, and grooming and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.¹⁴

The Department of Justice (DOJ) is responsible for enforcing Titles II and III of the ADA. Complaints regarding a potential ADA violation may be directed to the DOJ, or the victim may file a civil lawsuit over an alleged violation.¹⁵

Fair Housing Act (FHA)

The FHA prohibits discrimination on the basis of a mental or physical disability in various types of housing transactions, including the buying or renting of a home or apartment.¹⁶ One type of disability discrimination prohibited by the FHA is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.¹⁷ The U.S. Department of Housing and Urban Development (HUD) and various courts have affirmed that housing providers must, as a reasonable accommodation, modify or make exceptions to a “no pets” policy for persons with disabilities who require service or assistance animals.¹⁸

HUD has stated that an assistance animal is “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”¹⁹ An assistance animal is not required to be individually trained or certified.²⁰ An animal that does not qualify as a service animal under the ADA may still qualify as an assistance animal under the FHA.²¹

If an individual requests a reasonable accommodation for a service or assistance animal, the housing provider must generally make the accommodation if the individual is disabled and has a disability-related need for the animal. However, the request may be denied if: (1) it would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services; (2) the specific animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or (3) the

specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.²² Please note that under the FHA, breed, size, and weight limitations may not be applied to assistance animals.²³

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for a service or assistance animal.²⁴ If the individual's disability is not readily apparent, housing providers are permitted to ask the individual to provide reliable documentation of a disability and their need for a service or assistance animal.²⁵ A housing provider may generally require the individual to cover the costs of repairs for damage to the dwelling caused by the animal if it is the provider's normal practice to assess tenants for any damages they cause to the premises.²⁶

HUD and the Department of Justice are responsible for enforcing the FHA through a complaint driven process.²⁷ Individuals who believe they have been victims of a discriminatory housing practice under the FHA may also file suit in a court of law.²⁸

Air Carriers Access Act (ACAA)

The ACAA generally prohibits discrimination by airlines against individuals with disabilities.²⁹ Under the ACAA, airlines must generally allow individuals with disabilities to travel with service animals in the cabin at no additional charge.³⁰

Under the ACAA, a service animal is considered to be an animal that is individually trained to assist a person with a disability, or an animal that is necessary for the emotional well-being of a passenger.³¹ For purposes of the ACAA, a service animal designation is not limited to dogs, but airlines are never required to accept snakes, other reptiles, ferrets, rodents, and spiders.³² Airlines may also exclude animals that are too large or heavy to be accommodated in the cabin, pose a direct threat to the health or safety of others, cause a significant disruption of cabin service, or are prohibited from entering a foreign country that is the flight's destination.³³ Foreign airlines are only required to transport dogs.³⁴

When determining whether an animal is a service animal or pet, the airline must accept identification cards, other written documentation, presence of harnesses or tags, or the credible verbal assurances of an individual with a disability using the animal.³⁵ But if a passenger seeks to travel with an animal

that is used as an emotional support animal, the airline is not required to accept the animal for transportation in the cabin unless the passenger provides current documentation on the letterhead of a licensed mental health professional evidencing the passenger's need for the animal.³⁶

The U.S. Department of Transportation's Aviation Consumer Protection Division is responsible for enforcing the ACAA through a complaint driven process.³⁷ The ACAA does not, however, provide for a private right of action against an airline.³⁸

Texas Law

Texas law supplements the federal laws referenced above. Under state law, no person with a disability may be denied admittance to a public facility because of the person's disability.³⁹ The law broadly defines "public facility" to include places such as a street, airplane, bus, hotel, public government building, retail business, college dormitory or other educational facility, and restaurant.⁴⁰

"Chapter 121 of the Texas Human Resources Code requires that persons with disabilities have the same right as the able-bodied to the full use and enjoyment of any public facility in the state, including the right to use [a service or] assistance animal[.]"⁴¹ State law defines both "assistance animal" and "service animal" to mean a dog that is specially trained or equipped to help a person with a disability and that is used by a person with a disability. By using the terms interchangeably, and by limiting the definition to dogs, the law may cause confusion amongst the public due to the differences from how those terms are used in various federal laws.

Chapter 121 encompasses many of the same requirements and prohibitions found in the ADA and ACAA, but in some instances, state law goes further. For example, chapter 121 provides that a service animal in training may not be denied admittance to any public facility when accompanied by an approved trainer.⁴² The relevant federal laws do not address the admittance of service animals during their training. Also unlike federal law, the state expressly prohibits individuals from assaulting, harassing, interfering with, injuring, or killing a service or assistance animal.⁴³

State law also addresses service and assistance animals in the context of housing accommodations. Like the FHA, state law provides full and equal access to housing accommodations for a person with a disability who has a service animal.⁴⁴ In the context of housing accommodations, individuals with disabilities may not be required to pay extra compensation or make a

deposit for a service animal, but are liable for damages done to the premises by the animal.⁴⁵

Perhaps the biggest distinction between federal law and state law is in the means of their enforcement. As explained above, the relevant federal laws are not criminal in nature. Rather, violations of federal law are enforced by federal agencies or through private civil actions, which may result in civil penalties or monetary damages. Chapter 121 of the Texas Human Resources Code also provides for a private right of action against discrimination, but notably it also establishes criminal penalties for those who deny access to people with disabilities because of a service or assistance animal, for those who harm a service or assistance animal, or for those who misrepresent an animal as a service or assistance animal.⁴⁶ Offenses are punishable by fines of not more than \$300 and 30 hours of community service at a governmental entity or nonprofit that serves people with visual impairments or other disabilities, or another entity or organization chosen by the court.⁴⁷

As it is a criminal statute, the responsibility for enforcing chapter 121 of the Texas Human Resources Code rests primarily in the hands of local prosecutors and peace officers.⁴⁸ Many law enforcement officers may be unaware of the state law referenced above, possibly because of the law's inclusion in the Human Resources Code rather than the Penal Code. Law enforcement agencies should, therefore, prioritize the education of their prosecutors and peace officers in these laws.

General Recommendations

1. To avoid continued confusion, amend state law to clarify the difference between service animals and assistance animals.
2. Remove "approved" from the term "approved trainer" in section 121.003(i) of the Texas Human Resources Code. The term "approved" is not defined in statute and no state agency has regulatory authority to license or certify an individual as a trainer.
3. Increase the penalty for fraudulent representation of service or assistance animals. This will serve as a stronger deterrent.
4. For violations of chapter 121 of the Texas Human Resources Code, include additional penalty options such as community service or court ordered disability awareness classes. These penalty options are present in other disability laws and have been shown to reduce recidivism.

5. Designate a state agency to create public awareness training/classes regarding service and assistance animals. Past public education campaigns have proven to be successful.

Guiding Principles

The workgroup agreed upon the following set of principles that should inform any new legislation affecting the rights of service animal handlers:

- Oppose any requirement to license or certify service animal handlers.
Rationale: Potential conflict with federal law.
- Oppose any limits on specific breeds of service animals.
Rationale: Potential conflict with federal law.
- Oppose establishment of any voluntary registry for service animals.
Rationale: Non-participation in the registry may cause some to question a particular dog's designation as a service animal.

Resources

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Endnotes

¹ 28 C.F.R. §§ 35.104, 36.104 (defining “service animal” for purposes of Titles II and III of the ADA).

² *Id.*; Tex. Hum. Res. Code § 121.002(1).

³ 14 C.F.R. § 382.117 (defining “service animal” for purposes of the ACAA).

⁴ *Id.*; Tex. Hum. Res. Code § 121.002(1).

⁵ 42 U.S.C. §§ 12111-12117.

⁶ See 29 C.F.R. Appendix to Part 1630 - Interpretive Guidance on Title I of the Americans with Disabilities Act; Service Animals and Employment Accommodation (<http://nwadacenter.org/factsheet/service-animals-employment-accommodation>).

⁷ See *Arndt v. Ford Motor Co.*, 247 F.Supp.3d 832 (E.D. Mich. 2017); *Miranda v. Schlumberger Tech. Corp.*, 2014 WL 12489995 (W.D. Tex. 2014).

⁸ 42 U.S.C. §§ 12131-12189.

⁹ 28 C.F.R. §§ 35.104, 36.104.

¹⁰ *Id.* §§ 35.136(b) and 36.302(c)(2).

¹¹ *Id.* §§ 35.136(f) and 36.302(c)(6).

¹² *Id.* §§ 35.136(f) and 36.302(c)(6).

¹³ *Id.* §§ 35.136(h) and 36.302(c)(8).

¹⁴ U.S. DOJ Civil Rights Division, *Frequently Asked Questions about Service Animals and the ADA* (available at: https://www.ada.gov/regs2010/service_animal_qa.html).

¹⁵ 42 U.S.C. § 12133; 28 C.F.R. §§ 35.170, 36.501, and 36.502.

¹⁶ 42 U.S.C. §§ 3601-3619.

¹⁷ *Id.* § 3604(f)(3)(B).

¹⁸ See, e.g., *Revoock v. Cowpet Bay West Condo. Ass’n*, 853 F.3d 96 (3rd Cir. 2017); *Castillo Condo. Ass’n v. U.S. Dep’t of Hous. & Urban Dev.*, 821 F.3d 92 (1st Cir. 2016). See also U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2013-01 (April 25, 2013) (available at <https://archives.hud.gov/news/2013/pr13-060.cfm>).

¹⁹ U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2013-01 (April 25, 2013).

²⁰ *Id.*

²¹ See *Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F.Supp.2d 1028, 1036 (D.N.D. 2011) (“[T]he FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability.”); *Sanzaro v. Ardiente Homeowners Ass’n LLC*, 21 F.Supp.3d 1109, 1119 (D. Nev. 2014) (“the relevant inquiry under the FHA is whether the animal ‘performs the disability-related assistance or provides the disability-related benefit’”).

²² U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2013-01 (April 25, 2013).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 42 U.S.C. §§ 3610, 3612, and 3614.

²⁸ *Id.* § 3613.

²⁹ 49 U.S.C. § 41705; 14 C.F.R. § 382.11.

³⁰ 14 C.F.R. §§ 382.117(a) and 382.31(a).

³¹ *Id.* § 382.117(d)-(e).

³² *Id.* § 382.117(f).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* § 382.117(d).

³⁶ *Id.* § 382.117(e).

³⁷ 14 C.F.R. § 382.159.

³⁸ See *Stokes v. Sw. Airlines*, 887 F.3d 199 (5th Cir. 2018).

³⁹ Tex. Hum. Res. Code § 121.003(c).

⁴⁰ *Id.* § 121.002(5).

⁴¹ *Livingston v. Beeman*, 408 S.W.3d 566, 567-68 (Tex. App.—Austin 2013) (internal quotations omitted), *aff'd*, 468 S.W.3d 534 (Tex. 2015).

⁴² Tex. Hum. Res. Code § 121.003(i).

⁴³ *Id.* § 121.003(j).

⁴⁴ *Id.* § 121.003(h).

⁴⁵ *Id.*

⁴⁶ Tex. Hum. Res. Code §§ 121.004 and 121.006.

⁴⁷ Tex. Hum. Res. Code §§ 121.004 and 121.006.

⁴⁸ Tex. Att’y Gen. Op. No. JM-1089 (1989).