Pedestrian Work Zones & the Americans with Disabilities Act

Ken Woodruff, Civil Rights Program Manager
Federal Highway Administration – Indiana Division
Outline of Our Session

• Laws and Regulations (K. Woodruff, FHWA)

• Pedestrian Work Zone Guidance (R. Drumm, FHWA)

• INDOT’s State of Practice & Tools (J. Ritter, INDOT)
Outline of Part 1

• Brief Indiana History and Future

• Laws/Regulations/Authority

• A Story: Complaint Regarding Pedestrian Work Zones
Keep Pushing Towards Compliance

- Past 10 Years in Indiana:
  - Transition Plans (Thank You Indiana)
    - 9 to 300ish
  - INDOT Standards and Standard Drawings
  - Procedures
  - Training and Awareness

- On-going >>> Work Zone = Practical Solutions
  - Whenever Pedestrian Accessible Route (PAR) is involved
    - When you impact the PAR you are impacting people’s mobility.
      - Including People With Disabilities
Laws

• **Section 504 of the Rehabilitation Act (1973)**
  • Applies to Federally Funded Projects
  • Prohibits Discrimination on the Basis of Disability
    • 29 U.S.C. Section 794 – Nondiscrimination Under Federal Grants and Programs

• **Title II of the Americans with Disabilities Act (1990)**
  • Applies to State and Local Governments
  • Prohibits Discrimination on the Basis of Disability
    • 42 U.S.C. Section 12131: Part A – Prohibition Against Discrimination
Regulations

• 28 CFR Judicial Administration (US DOJ & all others)

• 28 CFR 35.130:
  • (b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability –
  • (b)(1)(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

• 28 CFR 35.160:
  • (a)(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
    • Work Zone Barriers/Signs are communication devices as well as safety devices!
Regulations

- 49 CFR = TRANSPORTATION (USDOT)
  - 49 CFR 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

- 49 CFR 27.7 Discrimination Prohibited
  - (a) “General. No qualified handicapped person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program....” [sic]
  - Barden v. Sacramento establishes that sidewalks are a “program”
Regulations

• 49 CFR 27 (continued)
  • 49 CFR 27.7 Discrimination Prohibited
  • 49 CFR 27.7 (b) – Discriminatory Actions Prohibited
  • 49 CFR 27.7 (c) – Communications Required
    • Signage/barriers = Communication Devices

• 49 CFR 2.9 – Assurances
  • Nondiscrimination Assurances required to receive Federal-Aid Highway funds
Regulations

• 23 CFR = HIGHWAYS (Federal Highway Administration)

• Pedestrian & Bicycle Accommodations & Projects
  • 23 CFR 652.5: Policy
    • “The safe accommodation of pedestrians and bicyclists should be given full consideration during the development of Federal-aid highway projects, and during the construction of such projects. The special needs for the elderly and handicapped shall be considered in all Federal-aid projects that include pedestrian facilities.” [sic]
AN ADA Compliant in Indiana: It Can Happen to You Too!

• City/County Failed to Provide:
  • Accessible and Safe Detour Route
  • Adequately Detour Signage
  • Compliant Curb Ramps Along Detour

• City/County was Required to:
  • Develop Accessible Detour Around Work Area
  • Install Crash Barrier at Pedestrian/Motorist Conflict Points
  • Install Detour Signage
  • PLUS – Update their ADA Transition Plans
Typically Seen Pedestrian Work Zone

- Barrier Needed
- Police Tape Not Detectable
- Needs Barrier
- Close This Ramp
Better: More Like What Should Be Installed

Crawfordsville (INDOT)  
Detectable Barriers  
Greencastle (City)
Oh..
This is also something that should be avoided!
Conclusion

• Laws and Regulations = Nondiscrimination is Required

• Work Zones Must be Safe for Traffic and Pedestrians

• There is Room for Improvements, and

• There is Ample Guidance Available...and please

• No Porta-lets in the PAR