

## I. PURPOSE

A. To provide information and procedures when communicating with citizens who are Deaf, DeafBlind, Hard of Hearing, and Deaf with other disabilities.

B. It is the policy of this department to take all reasonable steps to accommodate such individuals in any law enforcement contact to ensure they are not subject to discrimination or any lack of access to services. Law enforcement personnel have specific legal obligations under the Americans with Disabilities Act to communicate effectively with people who are Deaf, DeafBlind, Hard of Hearing, and Deaf with other disabilities.

## II. DEFINITIONS

### **American Sign Language**

American Sign Language (ASL) is a complete, natural language that has the same linguistic properties as spoken languages, with grammar that differs from English.

### **Auxiliary Aids and Services**

The ADA uses the term “auxiliary aids and services” (“aids and services”) to refer to the ways to communicate with people who have communication disabilities.

- For people who are blind, have vision loss, or are deafblind, this includes providing a qualified reader; information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information. A “qualified” reader means someone who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.
- For people who are deaf, have hearing loss, or are deaf-blind, this includes providing a qualified notetaker; a qualified sign language interpreter, oral interpreter, cued-speech interpreter, or tactile interpreter; real-time captioning; written materials; or a printed script of a stock speech (such as given on a museum or historic house tour). A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary.

- For people who have speech disabilities, this may include providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly), especially if the person will be speaking at length, such as giving testimony in court, or just taking more time to communicate with someone who uses a communication board. In some situations, keeping paper and pencil on hand so the person can write out words that staff cannot understand or simply allowing more time to communicate with someone who uses a communication board or device may provide effective communication. Staff should always listen attentively and not be afraid or embarrassed to ask the person to repeat a word or phrase they do not understand.

In addition, aids and services include a wide variety of technologies including 1) assistive listening systems and devices; 2) open captioning, closed captioning, real-time captioning, and closed caption decoders and devices; 3) telephone handset amplifiers, hearing-aid compatible telephones, text telephones (TTYs), videophones, captioned telephones, and other voice, text, and video-based telecommunications products; 4) videotext displays; 5) screen reader software, magnification software, and optical readers; 6) video description and secondary auditory programming (SAP) devices that pick up video-described audio feeds for television programs; 7) accessibility features in electronic documents and other electronic and information technology that is accessible (either independently or through assistive technology such as screen readers)

**Real-time captioning** (also known as computer-assisted real-time transcription, or CART) is a service similar to court reporting in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.

The free nationwide telecommunications relay service (TRS), reached by calling 7-1-1, uses communications assistants (also called CAs or relay operators) who serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones. The communications assistant tells the telephone user what the other party is typing and types to tell the other party what the telephone user is saying. TRS also provides speech-to-speech transliteration for callers who have speech disabilities.

**Video relay service (VRS)** is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a standard voice telephone. The interpreter tells the telephone user what the subscriber is signing and signs to the subscriber what the telephone user is saying.

**Video remote interpreting (VRI)** is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss. The new regulations give covered entities the choice of using VRI or on-site interpreters in situations where either would be effective. VRI can be especially useful in rural areas where on-site interpreters may be difficult to obtain. Additionally, there may be some cost advantages in using VRI in certain circumstances. However, VRI will not be effective in all circumstances. For example, it will not be effective if the person who needs the interpreter has difficulty seeing the screen (either because of vision loss or because he or she cannot be properly positioned to see the screen, because of an injury or other condition). In these circumstances, an on-site interpreter may be required.

Examples include the use of qualified interpreters on site or through the use of video-remote interpreting (VRI), real-time computer aided transcription services, written materials, exchange of written notes, assistive listening systems or devices, telephone handset amplifiers, telephones compatible with hearing aids, captioning, text telephone (TTY), videophones, accessible electronic and information technology, or other effective methods for making aurally delivered information available to individuals who are deaf or hard of hearing.

### **Pro-Tactile Sign Language Interpreters**

An interpreter with any certification that demonstrates professional knowledge and skills that meet or exceed the minimum, historically strict, professional standards necessary to perform in a broad range of interpretation and transliteration assignments within three domains: general knowledge of the field, ethical decision making and interpretation skills in both signed and spoken English and knowledge of Pro Tactile Sign Language.

### **Large print materials**

The Americans with Disabilities Act (ADA) does not specify any particular **requirements** for **large print**. There are some sources that suggest a minimum font size of 18, but the results from that can vary depending on font style, and whether bold typeface is selected.

### **Support Service Providers (SSP)**

Many deafblind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs are not “aids and services” under the ADA. However, they provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.

## II. FIRST ENCOUNTERS

A. Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, department employees should remain alert to the possibility of communication problems and exercise special care in the use of all gestures, and verbal and written communication in an effort to minimize initial confusion and misunderstanding when interacting with any individual(s) with known, suspected, or perceived disabilities that require law enforcement to modify their approach to ensure effective communication.

B. Law enforcement shall recognize that people from every level of society, every age, every race, every occupation, and every level of education are impacted by being Deaf, DeafBlind, Hard of Hearing, and Deaf with other disabilities, therefore, law enforcement may come across persons with these conditions who are victims, suspects, witnesses, or who have been injured in accidents or involved in traffic crashes.

C. Law enforcement may need to modify their method of communication in a minor to a major way to ensure that it is effective with anyone they meet. A person who does not respond to law enforcement or follow law enforcement’s commands may not be refusing to cooperate, they may not be aware that law enforcement is trying to communicate with them.

D. Usually a person who is Deaf, Hard of Hearing, DeafBlind, or Deaf with other disabilities, will identify their deafness or blindness by pointing to their ears or eyes and shaking their head, “no”, or by signing to you, among other ways. They may reach into their pocket or bag for pencil and paper, their deaf identification card, mobile phone, or other communication device in order to communicate with you. Law enforcement should be careful to ensure that a person’s act of reaching into their pocket or bag is not misunderstood by the police officer causing wrongful injury.

E. Law enforcement should confirm whether or not a person actually has any level of deafness or whether or not there are any form of communication barriers shall be done through making reasonable accommodations with the person and finding out from them. Alternatively, this confirmation may also be done by contacting people who the person directs law enforcement to interact with. They might ask for a qualified sign language interpreter to question them further. The person may also be wearing hearing aids and might need to adjust it in a noisy setting to be able to understand you. Law enforcement agencies do not need to provide personally prescribed devices such as hearing aids.

F. Many people with hearing disabilities tend to rely on their eyes to take in information more than they rely on their ears. That means efforts should be made to ensure they can see you or what you are doing as much as possible. Shining bright flashlights towards them might be a barrier for them to communicate with you.

G. DeafBlind persons communicate by touching. If you noticed the person is Deaf and then later realized they are blind, you could let them know you are by letting them touch your badge or something to get the message that you are a police officer.

H. Other factors to consider to better ensure effective communications with [people with hearing and/or visual disabilities:

1. Before speaking, get the person's attention.
2. Face the person and do not turn away while speaking.
3. Try to converse in a well-lit area.
4. Do not cover one's mouth or chew gum.
5. If the person is wearing a hearing aid, do not assume the individual can understand you.
6. Minimize background noise and other distractions whenever possible.
7. When communicating orally, speak clearly and distinctly and use gestures and facial expressions to reinforce what you are saying.
8. Use visual aids when possible to reinforce communications, such as pointing to printed information on a citation or other documents.
9. Remember that only up to one third (1/3) of spoken words can be understood by speech or lip reading.

### III. NON-EMERGENCY OR PRE-PLANNED ENCOUNTERS

When it is known or suspected that officers will be contacting, questioning, or arresting an individual with any level of deafness or blindness that may cause a communication barrier, an effective form of communication should be pre-arranged if possible under the

circumstances. Generally, this will mean the officer will need to arrange auxiliary aids, a qualified sign language interpreter or other method to assist with communication during the contact. Casual contacts with complainants, suspects, victims, and witnesses with any level of deafness or blindness can be accomplished by hand written materials or other methods that are effective according to the person with a disability.

#### IV. EMERGENCY COMMUNICATION

A. People with hearing and/or visual disabilities each have a method of effective communication and there are not one size fits all. For example, lip reading is very difficult and most Deaf citizens cannot read lips fluently and excitement may cause confusion even to a skillful lip reader. Law enforcement should not depend on lip reading for accurate communication.

B. Law enforcement should be aware that some people with hearing and/or visual disabilities, in an attempt to be cooperative, will act as if they are understanding the communication in order to be cooperative. For example, if a Deaf person nods their head up and down for "yes", it is important to corroborate that this is in fact a "Yes". For many Deaf people, it may be possible to write down information and for many people with visual impairments, to orally state the communication. If law enforcement doubts their understanding of a message, have them repeat the message. If they cannot, they probably did not understand the message.

C. Law enforcement should use pen and paper or mobile phone to type when possible. It is important to use simple words and clear, concise language. Use simple, direct questions when asking something and simple direct instructions when giving instructions. A person with a hearing and/or visual disability has all the same rights as anyone and should be informed as soon as possible of their legal rights when they are being detained, questioned, or arrested.

D. A copy of all written communication should be given to the Deaf person as soon as possible and/or the interpreter when they arrive.

#### V. PEDESTRIAN AND VEHICLE INVESTIGATIONS

Pedestrian and Vehicle Investigations When conducting a pedestrian or vehicle investigations and the subject appears to have a hearing disability, officers will:

- a. Be aware that individuals accustomed to communicating via sign language will make gestures or movements that are unfamiliar or seem out of place and will not immediately respond to verbal commands.
- b. Attempt to establish preliminary communication to confirm whether the individual has a hearing disability. This can be accomplished by using visual aids such as pointing,

gesturing, or by utilizing companions or family members who are present.

1) Use of Family Members as Interpreters Barring exigent circumstances, family members should never be used as interpreters or communication facilitators. Family members are not neutral parties and may insert their own interpretation or view of the situation or events that took place, instead of neutrally interpreting the communication of the complainant or witness.

2) Use of Companions/Friends as Interpreters Barring exigent circumstances, companions/friends should never be used as interpreters. However, if the deaf or hard of hearing individual specifically requests a companion/friend to interpret and that person voluntarily agrees to interpret, the individual may be used to communicate.

c. To serve each individual effectively, give primary consideration to the auxiliary aid or service requested by the person, even if other options are available. However, the underlying situation, complexity and duration of the interaction and other factors should also be considered when evaluating the reasonableness of a particular request.

d. If a Certified Sign Language Interpreter is requested, ask in writing which sign language the person uses (e.g., American Sign language, Pro Tactile, or another type), inform the individual that it will take some time for the interpreter to arrive and notify a patrol supervisor.

NOTE: When communicating through written notes, officers should keep in mind that individuals who use sign language may not be as proficient with reading and writing English, because their primary language may be sign language. This should not be perceived as indicative of their intelligence or ability to be good witness.

## VI. ARREST OF PEOPLE WITH HEARING AND/OR VISUAL DISABILITIES

Arrests of people with hearing and/or visual disabilities, officers will:

a. Absent exigent circumstances, handcuff the individual in front of their body when it is safe to allow them to use sign language or to communicate in writing and ensure that body camera is on to capture everything the person may sign that can be translate later by an interpreter.

b. Attempt to establish preliminary communication using visual aids when possible, such as pointing, gesturing, or utilizing companions or family members present.

1) Use of Family Members as Interpreters Barring exigent circumstances, family members should never be used as interpreters or communication facilitators. Family members are not neutral parties and may insert their own interpretation or view of the situation or events that took place, instead of neutrally interpreting the communication of the complainant or witness.

2) Use of Companions/Friends to as Interpreters Barring exigent circumstances, companions/friends should never be used as interpreters. However, if the deaf or hard of hearing individual specifically requests a companion/friend to interpret and that person voluntarily agrees to interpret, the individual may be used to communicate.

c. Advise the suspect of the reason for the arrest in the most effective means of communication reasonably available and advise the transporting officers of the individual's disability.

d. To serve each individual effectively, give primary consideration to the auxiliary aids or services requested by the person who is deaf or hard of hearing, even if other options are available. However, the underlying situation, complexity and duration of the interaction and other factors should also be considered when evaluating the reasonableness of a particular request. For example, mass arrest situations and arrests involving imminent need for public safety information may reasonably preclude the Department from using standard operating procedures.

e. If a Certified Sign Language Interpreter is requested or pro tactile sign language interpreter if the person is DeafBlind, ask in writing which sign language the person uses (e.g., American Sign Language Pro Tactile, or another type), inform the individual that it will take some time for the interpreter to arrive and notify a patrol supervisor.

## VII. TRANSPORTATION OF ARRESTEES WITH A HEARING AND/OR VISUAL DISABILITY

When a suspect with a hearing and/or visual disability is arrested and needs to be transported for processing, the transporting officers will:

a. Only transport the arrestee to the Police Detention Unit (PDU) and ensure that the in-vehicle camera is on to capture any visual communication by the person. You also may need to pull over or have your partner communicate with the person.

b. Ask the arrestee if they want someone notified about their arrest and where they are being transported. If desired, attempt to contact an available family member, friend or other responsible contact and inform them that the prisoner is being transported to the PDU.

c. Upon arrival at the PDU, notify personnel of the individual's disability and ensure the information is included in the Prisoner's Medical Checklist.

NOTE: It is critically important to include this information on the Prisoner's Medical Checklist and Prisoner Flow Chart to ensure that the individual receives the appropriate auxiliary aids or services from other criminal justice agencies.

## VIII. Patrol Supervisor Responsibilities:

a. Due to the extended time necessary for the arrival of any Certified Sign Language Interpreter, Patrol Supervisors will respond to all requests for Certified Sign Language Interpreters.

b. Patrol Supervisors will monitor all calls for service or incidents in which a member of the public, complainant, witness, suspect or arrestee is identified as deaf or hard of hearing to ensure compliance with the procedures outlined in this directive.

c. Law enforcement shall ensure the person with a hearing and/or visual disability have access to a videophone or TTY to make calls.

#### VIII. Operations Room Supervisor Responsibilities:

a. Ensure that all 75-48s involving a deaf or hard of hearing complainant are marked "ASL" and the information is entered into the INCT using LEP code "8." C. Police Detention Unit (PDU)

#### X. CUSTODIAL INTERROGATIONS

In an effort to ensure the rights of all people with or perceived to have disabilities are protected during arrest and custodial interrogation, this department places a high priority on providing reasonable accommodations to ensure effective communication as required by the Americans with Disabilities Act. It is further recognized that miscommunication during custodial interrogations may have a substantial impact on the evidence presented in any related criminal prosecution. As such, department personnel providing communication assistance in these situations will make every reasonable effort to accurately and effectively communicate with people with or perceived with disabilities.

Upon the arrest of a person with a hearing and/ or visual disabilities that affects communication and before interviewing/interrogating or taking the statement of the person, the officer conducting the interview shall make available to the person, at the earliest possible time, whatever reasonable accommodation is required by the person including a qualified interpreter to assist the person throughout the interview/interrogation and taking of a statement. ORS 133.515

It is critical that there is effective communication when providing anyone with perceived or actual hearing and/ or visual disabilities Miranda warnings. These concerns include that the person comprehends the written Miranda warnings and that the conceptual conflicts that signing may create due to misinterpretation.

- A. Whenever a person with a hearing and/or visual disability is being interviewed, it is important that they understand the following rights and warnings whenever appropriate:
1. The right to have an interpreter.
  2. The Miranda Warnings.
  3. The right to an attorney.

Law enforcement shall Inform the Deaf person, in writing, of their right to have an interpreter present. Due to the possibility of misunderstanding or communication barriers, it is possible any information gained prior to the presence of an interpreter may not be

admissible and/or may taint other evidence which also could become inadmissible. Show the person the written Miranda Warnings and advise them, in writing, that these warnings also apply to any written communication.

B. Law enforcement shall advise the person with a hearing and/or visual disability of the right to have an interpreter present in all situations where they are a suspect.

C. Upon the arrest of a person with a hearing and/or visual disability, a qualified interpreter must be provided before any interview, interrogation, or statement is taken.

#### XI. INTERPRETER USE CONSIDERATIONS/ OTHER RESOURCES

A. Law enforcement shall obtain the appropriate, qualified, certified interpreter at the earliest opportunity.

B. Make certain that the interpreter understands the implications of each Miranda Warning.

C. Law enforcement shall attempt to explain the Miranda Warning with the assistance of the interpreter.

D. Allow ample time for law enforcement and the interpreter to explain the Miranda Warnings to the person with a hearing and/or speech disability.

E. In critical felony cases a video record should be considered to make an accurate record of the interaction.

F. Attempt to ascertain whether the person with the hearing and/or visual disability understands their rights by asking the person to paraphrase in their own words what they have been told.

G. If the interpreter insists that the person with the hearing and/or visual disability does not understand their rights, do not proceed with further questioning.

H. Employees may elect to read aloud a Department form or document such as a citizen complaint form to a visually impaired individual or utilize a photocopier to enlarge printed forms for a visually impaired individual.

I. Law enforcement shall give primary consideration to the preference for reasonable accommodation expressed by the person with a disability for effective communication. If the requested reasonable accommodations for effective communication are neither unduly burdensome nor do they cause an undue hardship as defined by the Americans with Disabilities Act, they should be granted.