

# POLICE INTERACTIONS WITH PERSONS WHO ARE DEAF OR HARD OF HEARING

## I. PURPOSE AND SCOPE

- A. To provide information and procedures to police officers for successfully communicating with persons who are deaf or hard of hearing (HOH).
- B. When an officer learns that a person is deaf or HOH, the officer shall take all reasonable steps under the circumstances to accommodate those persons in order to assist them in communicating effectively with the officer. In addition to requirements under this policy, law enforcement personnel have specific legal obligations under the Americans with Disabilities Act to provide reasonable accommodations to communicate effectively with people who are deaf, HOH, or who have other disabilities.
- C. There are many types of auxiliary aids and services that may assist a deaf or HOH person to communicate. These could include a hearing aid, a cochlear implant, the exchange of written notes, telecommunications devices for the deaf (TDD), teletypewriters (TTY), telephone handset amplifiers, videotext displays, or Video Remote Interpreters (VRI).

## II POLICY

It is the policy of this agency ensure that a high level of service is provided to all community members, including those who are deaf or hard of hearing. This Agency has specific legal obligations under the Americans with Disabilities Act and the Rehabilitation Act to carry out these policies and legal obligations. Officers will use every means at their immediate disposal to ensure appropriate understanding by those who are deaf or hard of hearing.

## III. DEFINITIONS

Definitions related to this policy include:

**Auxiliary aids** - These are used to communicate with people who are deaf, hard of hearing or have impaired speech. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; use of a notepad and pen or pencil to exchange written notes; use of a computer or typewriter; use of an assistive listening system or device to amplify sound; use of a teletypewriter (TTY), videophones (video relay service or VRS); or use of a qualified interpreter.

**Deaf or hard of hearing** - An individual who has or is regarded as having substantially limited hearing with or without assistance.

**Qualified interpreter** - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, transliterators, sign language interpreters, intermediary interpreters, and

Video Remote Interpreting Services (VRI). VRI is a form of sign language interpreting that allows people who are deaf or hard of hearing to communicate with a hearing person at the same site via videoconferencing instead of live, on-site interpreting.

### III TYPES OF AUXILIARY AIDS AND SERVICES

#### TTY AND RELAY SERVICES:

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications. The Department will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service.

#### VIDEO REMOTE INTERPRETING:

VRI interpreting services offer the opportunity for readily available interpreting for lengthy or complex transactions and can usually be accessed more quickly than in-person interpreters. VRI interpreters will be:

- A. Experienced in providing interpretation services related to law enforcement matters;
- B. Certified in American Sign Language (ASL);
- C. Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser; and,
- D. Familiar with the use of VRI and/or VRS interpreting services.

When the need for VRI interpreting or an on-site qualified interpreter can be anticipated, department members should make the request at the earliest reasonable opportunity, as there will always be some significant delay in arranging the on-site qualified interpreter services, and even VRI interpreting services will take some time to arrange. VRI interpreting services should be readily available to patrol officers and other department members.

#### VIDEO PHONES, CELL PHONES AND TABLES WITH VIDEO CAPACITY:

Video phones can be used in place of TTY or relay services, and may be used for texting or for captioning services.

### IV. FIRST ENCOUNTERS

- A. Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, staff should remain alert to the possibility that they may be interacting with a person who is deaf or HOH, and that the person may not be following commands because they cannot hear them, and they are not aware that you are trying to communicate important information to them.

- B. Persons who are deaf and HOH come from every level of society, every age, every race, every occupation, and every level of education. You may encounter a person who is deaf or HOH as a crime victim, a suspect, a witness, or who have been injured or involved in a traffic crash.
- C. A person who is deaf or HOH may identify their deafness by pointing to their ears and shaking their head "no". They may reach into their pocket or purse for pencil and paper in order to communicate with you. There have been many incidents where not obeying commands or reaching into a pocket has resulted in tragedy when the officer fails to recognize that the person is deaf or HOH.
- D. Deaf or HOH persons may require additional time to understand and respond to commands, instructions, and questions.

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

- A. When it is known or suspected that officers will be contacting, questioning, or arresting an individual who is deaf or HOH, an effective form of communication should be pre-arranged if possible or if time allows. Generally, this will mean the officer will need to arrange a qualified sign language interpreter or other auxiliary aids, to assist with communicating during the contact. The use of a video remote interpreter (VRI) over a phone or tablet can be a very effective way to communicate with a person who communicates using American Sign Language (ASL) or another sign language.
- B. Casual contacts with complainants, victims and witnesses who are deaf or HOH may be accomplished by hand written notes or gestures, but officers should be aware that some deaf or HOH persons do not read, write or speak English. For many deaf or HOH persons, ASL, is their first, and potentially their only language.
- C. For minor contacts with a deaf or HOH person, such as providing directions, a friend or family member may be used as an interpreter. Officers must not use a friend or family member to interpret when the substance of the communication is important, such as when the deaf or HOH person is a victim, witness or suspect in a crime. The more complex or important the communication is, the more critical to obtain the services of a qualified interpreter.

#### VI. EMERGENCY COMMUNICATION

- A. The best tool for emergency communication is the use of VRI on a phone or tablet if available. For a person who communicates using sign language, the use of a qualified interpreter is the best way to share accurate information with a hearing person. In an emergency, a family member or friend may interpret when a qualified interpreter is not available.
- B. Lip reading is very difficult and most persons who are deaf or HOH cannot read lips fluently, and excitement may cause confusion even to a skillful lip reader. Do not depend on lip reading for accurate communication.

- C. Keep in mind that some deaf and HOH persons, in an attempt to be cooperative, will nod their head "yes" when in fact they have not understood what was said. To promote clear communications before an interpreter is present, determine if the person can read and write. If they can, write all messages when possible.
- D. Be aware that some people, whether they are deaf or not, may only be able to read and write relatively simple words, and do not have an extensive vocabulary. 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. Persons who are deaf and HOH have the same rights as a hearing person and should be informed as soon as possible when they are being detained, questioned, or arrested.

## VII. CUSTODIAL INTERROGATIONS

This agency places a high priority on providing reasonable communication assistance to ensure the rights of all deaf and HOH persons are protected during an arrest or custodial interrogations. Miscommunication during custodial interrogations may have a substantial impact during criminal prosecution. Agency personnel providing communication assistance in these situations will make every reasonable effort to accurately and effectively communicate with deaf or HOH persons.

## VIII. ARREST AND BOOKINGS

Upon the arrest of a deaf or HOH person or when taking the statement of the person, the officer conducting the interview shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout the interview/interrogation and taking of a statement. ORS 133.515. If the officer has an arrest warrant or has developed PC, a deaf or HOH person may be placed under arrest without getting an interpreter. Because the deaf or HOH person may not know why they are being arrested, best practice is to obtain an interpreter – through VRI or otherwise – to explain what is happening and relieve the person's anxiety.

If the arrest is for a minor crime and officer safety is not an issue, handcuffs should be avoided if the person communicates using sign language, or the person may be handcuffed in the front.

If an arrested person utilizes a communications device such as a laptop, phone, or another assistive listening device, the officer should keep the device available to the arrestee for additional interviews or turned over to jail personnel if lodged.

For DUII investigations, be aware that the speech of a deaf or HOH person may resemble that of an incoherent or drunk person. In addition, hearing difficulties may also impact the person's equilibrium and balance.

## IX. MIRANDA WARNING

Upon the arrest of person who is deaf or HOH, a qualified interpreter shall be provided before any interview, interrogation, or statement is taken.

When Mirandizing a deaf or HOH person suspected of a crime are the level of reading comprehension as applied to written Miranda warnings and the conceptual conflicts that signing may create due to misinterpretation.

- A. Whenever a deaf or HOH person is 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.
- B. Show the person the written Miranda Warnings and advise them, in writing, that these warnings also apply to any written communication.
- C. Advise the deaf or HOH person of the right to have an interpreter present in all situations where they are a suspect.
- D. Whenever possible the officer should use a live or video remote interpreter for all communications with a deaf or HOH person if they are suspected of a crime.

X. INTERPRETER USE CONSIDERATIONS/ OTHER RESOURCES

- A. Obtain the interpreter at the earliest opportunity. The interpreter must be a qualified interpreter, meaning that they must be able to successfully communicate with the deaf or HOH person. Be advised that there are a large number of different sign languages, and while ASL is the most commonly used sign language in the US, it may not be used in other countries. There are also regional dialects in ASL, just as there are in spoken English (southern drawl for example).
- B. Make certain that the interpreter understands the implications of each Miranda Warning.
- C. Attempt to explain the Miranda Warning with the assistance of the interpreter.
- D. Allow the interpreter as much time as necessary to explain the Miranda Warnings to the person who is deaf or HOH.
- E. In critical felony cases a video record should be made for an accurate record of the interaction.
- F. Attempt to ascertain whether the deaf or HOH person 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 deaf or HOH person does not understand their rights, do not proceed with further questioning.

## XI. TRAINING

The agency will provide periodic training that should include awareness and understanding of this policy, procedures related to available resources, and procedures for accessing qualified interpreters. The agency is responsible for ensuring new members receive training related to interacting with individuals who have disabilities, including individuals who are deaf, hard of hearing, who have impaired speech or vision, or are blind.