

# GENERAL ORDER



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<b>Deaf or Hearing Impaired Arrestees</b>	
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## DISTRICT OF COLUMBIA

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### I. Background

Title II of the Americans with Disabilities Act (ADA) as well as the D.C. Interpreters for Hearing Impaired and Non-English Speaking Persons Act, D.C. Code § 31-2701, *et seq.*, require specific efforts on the part of police officers to ensure fair and accurate communication with an arrested person who is deaf or has a hearing impairment.

D.C. Code § 31-2702(e) provides:

Whenever a communication-impaired person is arrested and taken into custody for an alleged violation of a criminal law, the arresting officer shall procure a qualified interpreter for any custodial interrogation, warning, notification of rights, or taking of a statement. No person who has been arrested but who is otherwise eligible for release shall be held in custody pending arrival of an interpreter. No answer, statement, or admission, written or oral, made by a communication-impaired person in reply to a question of a law-enforcement officer in any criminal or delinquency proceeding may be used against that communication-impaired person unless either the answer, statement, or admission was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of a waiver, unless the court makes a special finding upon proof by a preponderance of the evidence that the answer, statement, or admission made by the communication-impaired person was made knowingly, voluntarily, and intelligently.

### II. Policy Statement

When an officer, in the course of his or her duties, encounters a person who is deaf or hearing impaired, he or she shall take all necessary and appropriate steps, consistent with his or her other obligations, to ensure effective communication with the deaf or hearing impaired person. When effective communication requires a sign language interpreter, the officer shall take steps to provide one.

### III. Definitions

When used in this directive, the following terms shall have the meanings designated:

1. **Hearing-Impaired Person** -- a person who, because of a hearing impairment, cannot readily understand oral communications or who cannot communicate effectively through speech.
2. **Deaf Person** -- a person who has a hearing impairment which is so severe that the person is unable to process linguistic information through hearing, with or without amplification.
3. **Qualified Sign Language Interpreter** -- an interpreter who has been certified by the National Registry of Interpreters for the Deaf, and is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary, and as further described under Section V.D. of this directive.
4. **Auxiliary Aids** -- are tools to help the member communicate with the hearing impaired person. These aids include qualified interpreter services, written communications and materials, pads, pens and telecommunication devices for the deaf (TDD's).
5. **Exigent Circumstances** -- has the meaning used in Fourth Amendment law as interpreted by the courts, and includes immediate threats to any person's life or safety, hot pursuit, and prevention of destruction of evidence. See, e.g., *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-299 (1967).

### IV. Regulation

In every circumstance where an individual who is deaf or hearing impaired and an officer need to communicate, the officer is to provide an opportunity for effective communication with that individual. This directive states the measures the officer must use to do so.

### V. Notice of Right to Effective Communication and Determination as to Effectiveness of Communication

- A. Except in those situations outlined in Section VI below, in any situation where an officer, in the course of his or her assigned duties, has reason to believe that an individual with whom the officer is communicating or attempting to communicate has a hearing impairment, the officer must immediately take the following steps without delay:

1. Ascertain, through the exchange of written notes or by other means, whether the individual has a hearing impairment.
  2. Notify the individual, by use of a standardized form similar to a Miranda card, and if necessary through additional exchange of written notes or other means, that the police officer will provide a free, qualified sign language interpreter if the individual desires.
  3. Ascertain, through the exchange of written notes or otherwise, whether the individual believes that a qualified sign language interpreter is necessary for effective communication.
  4. If the individual requests a qualified sign language interpreter, ascertain whether the individual uses American Sign Language or Signed English to communicate.
- B. If the individual requests or otherwise expresses a preference for the use of a qualified sign language interpreter, or appears to be unable to express a preference or otherwise communicate without a qualified sign language interpreter, a qualified sign language interpreter shall be summoned through the procedures outlined in Section VIII below. The qualified sign language interpreter must arrive within 90 minutes of the request, except in extraordinary circumstances.
- C. If the individual is a suspect or a target of a criminal investigation, or a person from whom police are seeking consent to enter or search, no other efforts at communication may be made (except as provided in Section VI below) until the officer has determined whether the individual requires the use of a qualified sign language interpreter for effective communication, and, if so, until the interpreter has arrived.
- D. If the individual expresses a preference for the use of written communication, the officer shall provide a pad and pen or pencil and shall communicate with the individual in writing, including permitting the individual to communicate with the officer in writing. Written communication cannot be used as a substitute where the individual has expressed a preference for a sign language interpreter.

## **VI. Exceptions: Exigent Circumstances; Arrests on Warrant or Probable Cause; Terry Patdowns; Terry Stops**

The notice and determination procedures in Section V above need not be followed immediately in the following situations:

- A. Exigent Circumstances: IN ANY SITUATION INVOLVING EXIGENT CIRCUMSTANCES, POLICE MAY COMMUNICATE WITH THE INDIVIDUAL OR TAKE SUCH OTHER ACTION AS THE EXIGENT

CIRCUMSTANCES REQUIRE. Nothing in this directive should prevent any officer from any communication or immediate action that is required by exigent circumstances.

The notice and determination procedures in Section V should be followed, and a qualified sign language interpreter summoned, if necessary, as soon as the exigent circumstances permit (for example, as soon as the threat to life or safety has abated).

- B. Arrest on Warrant or Probable Cause: In circumstances where a suspect without a hearing impairment would be arrested on a warrant or on probable cause without an inter-view, a suspect who is deaf or hearing impaired may also be arrested without first following the notice and determination procedures in Section V.

The notice and determination procedures in Section V should be followed, and a qualified sign language interpreter summoned, if necessary, without delay following the arrest, as provided in Section X, below.

- C. Terry Patdowns: In circumstances where an officer, without communicating with an individual, has reasonable suspicion that would justify a Terry patdown, the officer may conduct a Terry patdown of a deaf or hearing impaired individual on the same basis as if the individual were not hearing impaired, without first following the notice and determination procedures in Section V.

If, following the Terry patdown, the individual is free to go without any further communication, the notice and determination procedures in Section V need not be followed, unless the deaf or hearing impaired individual, although free to go, indicates a desire to communicate further with the officer. In that instance, the notice and determination procedures shall be followed, and a sign language interpreter summoned, if necessary. If it becomes necessary for the officer to respond to another call, the officer may contact his supervisor to arrange for a qualified sign language interpreter at a later time, as provided in Section XII.B, below.

- D. Terry Stops: In circumstances where a suspect without a hearing impairment would be subject to a Terry stop for questioning, a suspect who is deaf or hearing impaired may also be stopped.

If, following the stop, the officer wishes to question the suspect, and it becomes apparent that the suspect is deaf or hearing impaired, the notice and determination procedures in Section V must be followed without delay.

If, following the stop, the suspect is free to go without any further communication, the notice and determination procedures in Section V need not be followed, unless the deaf or hearing impaired individual,

although free to go, indicates a desire to communicate further with the officer. In that instance, the notice and determination procedures shall be followed, and a sign language interpreter is summoned, if necessary. If it becomes necessary for the officer to respond to another call, the officer may contact his supervisor to arrange for a qualified sign language interpreter at a later time, as provided in Section XII.B, below.

## VII. Qualified Interpreter

- A. A qualified interpreter is an interpreter who has been certified by the National Registry of Interpreters for the Deaf, and is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. Where the person who is deaf or hearing impaired uses American Sign Language<sup>2</sup> for communication, the term "qualified interpreter" means a certified interpreter skilled in communicating in American Sign Language. The term "qualified interpreter" encompasses Relay Interpreter Teams<sup>3</sup>, when such are necessary for effective communication.
- B. A family member or friend of the individual who is deaf or hearing impaired may not be used to interpret unless:
1. the hearing impaired individual, on his or her own, requests that the family member or friend interpret;
  2. the family member or friend is able to interpret effectively and accurately in the hearing impaired person's preferred sign language;
  3. the family member or friend has no apparent conflict of interest with the hearing impaired individual; and

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<sup>2</sup> American Sign Language (ASL), as opposed to Signed English, is a language completely distinct from English, and is the native language of most deaf Americans. Signed English is a rendering of ASL signs into English word order and grammar. A deaf person who uses ASL will most likely be unable to communicate fully or successfully in written or Signed English. Many interpreters are competent only in Signed English.

<sup>3</sup> Relay Interpreter Teams are used to communicate with deaf individuals who have very minimal language skills, even in ASL. The Teams consist of a hearing 'English to ASL' interpreter ("hearing interpreter") and a deaf or hearing impaired 'ASL to Minimal Language Skill' interpreter ("deaf interpreter"). The hearing interpreter interprets the spoken word to the deaf interpreter, who uses gestures, pantomime, drama and ASL to convey that information to the deaf individual. The interpreters work in the reverse to convey information from the deaf individual to hearing individuals.

4. the family member or friend is of sufficient age and maturity to appreciate the nature of the communications with the police. The police officer may not request or suggest that a family member or friend interpret (unless required by exigent circumstances--see Section VI.A, above).
- C. Even where the hearing impaired individual requests it, a police officer may decline to use a minor child to interpret if in the police officer's judgment the child is not of sufficient age or maturity or is otherwise unable to interpret effectively.
- D. A friend or family member may not be used when interpreter services are needed during a criminal investigation or in an investigation conducted by MPD's Office of Professional Responsibility.
- E. If in the future the MPD acquires the technological capability to do so, qualified sign language interpreters may be used through real-time video relay, where the video relay permits communication that is substantially as effective as in-person communication.

### **VIII. Obtaining Qualified Interpreters**

Where determined to be necessary according to Section V, the officer will summon an interpreter, qualified in the sign language requested, through the procedures outlined below:

- A. The officer will contact the Communications Division, and notify the Dispatcher of the need for a qualified interpreter, the sign language requested (American Sign Language or Signed English), and the location where the qualified interpreter is needed.
- B. The Communications Division will then contact the interpreter referral service with which MPD has contracted, and request that a qualified interpreter be provided who is fluent in the sign language required.

### **IX. Handcuffing the Arrestee Who is Deaf or Hearing Impaired**

An arrestee who is deaf or hearing impaired generally cannot communicate effectively when handcuffed. For that reason, officers shall remove handcuffs from such an arrestee, or shall secure such an arrestee in a manner which permits communication, as soon as safely possible (considering the arrestee's physical resistance or violence, if any) after arrival at a secure facility.

**X. Effective Communication of Arrest, Charging and Booking Information**

- A. After every arrest, the notice and determination procedures set forth in Section V must be followed, or if they have not been followed already, without delay.
- B. As soon as any necessary auxiliary aids or services have been obtained, including if necessary the arrival of a qualified interpreter, the nature of the charges and all other information generally provided to arrestees under similar circumstances must be communicated effectively and promptly to the arrestee who is deaf or hearing impaired. This information includes, but is not limited to, the notice of the right to counsel, the right to a telephone call, and the procedure for posting bond or collateral, if that information is required to be or is generally provided to arrestees in similar circumstances. This information must be effectively communicated:
1. in the field, to the extent provided to arrestees generally; where provision of effective communication is not reasonably likely to result in:
    - a. an increased risk of disruptive conduct by onlookers;
    - b. an increased risk to the safety of an officer, the arrestee, or any other person;
    - c. a suspect's escape from pursuit;
    - d. the loss of evidence; or
    - e. unreasonable delay in transporting the arrestee to the station house;
  2. promptly upon booking at the station house, if not already communicated in the field; and
  3. in no event later than two hours after arrest, unless not possible by reason of injury or other exigency.
- B. In mass arrest situations occasioned by riot, organized civil disobedience, or other widespread civil disturbance, officers shall notify the Communications Division of the need to summon qualified sign language interpreter(s) as soon as it becomes apparent that a deaf or hearing impaired person (or persons) is among the arrestees. The Communications Division shall then summon a qualified sign language interpreter (or more than one, as necessary) to come to the location where the arrestees will be booked and processed. Using the sign language interpreter (and/or written communication, if requested by the hearing impaired person), the deaf or hearing impaired arrestees shall be booked and processed in the same manner and with the same speed as other arrestees who are not hearing impaired.

**XI. Interview or Interrogation of a Suspect Who is Deaf or Hearing Impaired**

- A. The notice and determination procedures set forth in Section V will be followed in every circumstance where a police officer seeks to interview a suspect who is deaf or hearing impaired to determine if there is probable cause to make an arrest, or where an officer seeks to interrogate an arrestee who is deaf or hearing impaired.
- B. Where an officer seeks to interview or interrogate a suspect who is deaf or hearing impaired, the notice and determination procedures outlined above must include notice to the suspect that the MPD will defer the interrogation or interview pending the appearance of a qualified interpreter.
- C. If it is determined, through the process outlined above, that a qualified interpreter is necessary to communicate effectively, the MPD will not interrogate, and will not Mirandize, the suspect until a qualified interpreter has arrived. When the qualified interpreter arrives, the Miranda warning will be administered through the qualified interpreter.
- D. The provisions of this directive shall be in addition to, and not in place of (nor in derogation of) the requirements of D.C. Code § 31-2702(e) when that section is otherwise applicable.

**XII. Interviewing a Victim, Complainant or Witness Who Is Deaf or Hearing Impaired**

- A. The notice and determination procedures set forth in Section V will be followed in every circumstance where a police officer seeks to interview a victim, complainant, or witness who is deaf or hearing impaired. If it is determined that a qualified interpreter is necessary to communicate effectively with a victim, complainant, or witness, then the investigating officer must provide the victim, complainant, or witness with a qualified interpreter.
- B. If the investigating officer cannot wait until a qualified interpreter arrives because the officer has to respond to another call, then the investigating officer must contact his or her supervisor and advise the supervisor of the case before leaving the scene, if circumstances permit. The supervisor will then request that a qualified interpreter be dispatched to the location of the victim, complainant, or witness and request that the dispatcher recontact the officer when the interpreter arrives; or the officer can request that the victim, complainant, or witness come voluntarily to the station house when a qualified interpreter is available. At that time, the investigating officer must return to the station house to complete the investigation.

- C. This section does not prohibit attempts at communication with a victim, complainant, or witness, while awaiting the arrival of a qualified interpreter once a qualified interpreter has been summoned, in cases where exigent circumstances require immediate communication. This section also does not prohibit *Terry* stops or patdowns, if reasonable suspicion exists to justify the stop or patdown without communicating with the deaf or hearing impaired individual. See Section VI, above.
- D. In conducting any criminal, traffic, or other investigation, no officer may rely solely on statements of others, without communicating with a deaf or hearing impaired person, if the officer would have communicated with a similarly situated person who was not deaf or hearing impaired.

### **XIII. Search Warrants and Consent to Search**

- A. Execution of Search Warrants:
  - 1. In any situation where an officer is executing a search warrant, and the officer becomes aware or has reason to believe a person with whom the officer is communicating for that purpose may have a hearing impairment, the officer shall follow the notice and determination procedures set forth in Section V to the extent it is practical to do so. However, those procedures shall not impede the officer from executing the warrant forthwith, if the warrant so requires.
  - 2. If, in order to execute the warrant, the officer needs to communicate with a deaf or hearing impaired individual (for instance, to determine which part of the premises or property fall within the scope of the warrant), the officer must follow the notice and determination procedures set forth in Section V, after first securing the premises to assure the safety of all individuals and the prevention of destruction of evidence.
  - 3. If an officer is executing a search warrant in a situation involving a deaf or hearing impaired person without first following the Section V notice and determination procedures, the officer shall determine whether, in the officer's judgment, the execution of the warrant is likely to take longer than ninety minutes.
    - a. If, in the officer's judgment, the execution of the warrant is likely to take longer than ninety minutes, and it appears that either the officer or the hearing impaired person wishes to communicate with the other, the officer shall follow the notice

and determination procedures in Section V as soon as it is practical to do so, and shall summon a sign language interpreter if required.

- b. If, in the officer's judgment, the execution of the warrant is likely to take less than ninety minutes, the officer shall notify the deaf or hearing impaired person, through writing or the use of a standardized form, of the availability of a qualified sign language interpreter at the station house. The officer shall instruct the hearing impaired person how to call the station house to arrange for a qualified interpreter there, if the hearing impaired person wants to come to the station house to ask questions or obtain information regarding the search and/or the search warrant.
  - c. All written notices given by the police to a deaf or hearing impaired person with respect to a search conducted by the police under Section XIII shall include notice of the availability of sign language interpreters and TDD numbers.
- B. Seeking Consent to Search: An officer may not obtain consent to enter or to search from a deaf or hearing impaired person until the notice and determination procedures in Section V have been followed, and a qualified sign language interpreter, if required, has arrived.
- C. An officer need not comply immediately with the notice and determination procedures in Section V in any situation involving exigent circumstances. See Paragraph III above. In such circumstances the officer should follow the notice and determination procedures in Section V as soon as the exigent circumstances permit.

#### **XIV. Telecommunication Devices for the Deaf (TDD's)**

- A. In instances where deaf or hearing impaired individuals contact officers of the MPD by telephone through use of TDD'S, the officers shall respond to the individuals by use of TDD or through the D.C. Relay Service, with the same timeliness as they respond to other telephone calls and messages.
- B. In instances where hearing individuals would be permitted a telephone call, MPD officers must provide individuals who are deaf or hearing impaired with an operable TDD, to enable them to place a telephone call with the same degree of independence and privacy that would be permitted to similarly situated persons absent any hearing disability.

**XV. Cross References**

A. Related Directives

S.O. 99-16 (Language Services Stipend)

S.O. 00-19 (Compliance with Title II of Americans with Disabilities Act)

B. Related Legal Sources

Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794

D.C. Code § 31-2701 *et seq.* (D.C. Interpreters for Hearing Impaired and Non-English Speaking Persons Act)

// SIGNED //  
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Chief of Police

CHR:NAJ:AFA