

## **DEALING WITH HEARING IMPAIRED PERSONS**

WILLIAMSTOWN POLICE DEPARTMENT POLICY & PROCEDURE NO.  <b>2.19</b>	EFFECTIVE DATE: 12/10/2021
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MASSACHUSETTS POLICE ACCREDITATION STANDARDS  REFERENCED: <b>none</b>	REVIEW DATE: 12/10/2022

### **I. GENERAL CONSIDERATIONS AND GUIDELINES**

Employees dealing with persons that are suspected of having hearing loss or being deaf should never assume that that the person understands the officer; the officer should make sure that [s]he understands. This caution applies to all forms of communication, whether sign language, speech, writing, or reading.

Communication problems in police-public encounters provide the basis for misunderstandings and potential problems, frustration, and embarrassment. Therefore, it is important that employees are able to recognize persons with hearing and communication handicaps, differentiate their actions and symptoms from other causes, and take measures to facilitate communication.

Some persons with hearing difficulties also suffer from inner ear impairments that can affect their balance, and their speech may be slurred or otherwise difficult to understand.

### **II. POLICY**

It is the policy of this police department that:

- A. Persons who are deaf or hearing impaired (hard of hearing) - whether they be victims, witnesses, or suspects – shall be treated with respect, and in any encounters with such individuals, an officer’s conduct shall conform to applicable provisions of federal and state law and this policy.

- B. This department shall make available access to speech language interpreters as coordinated by the Office of Deafness. <sup>i</sup>
- The Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) statewide Emergency Interpreting Service is operational 24/7. For medical, legal, and mental health emergencies in which deaf or hard of hearing persons need an interpreter call 1-800-249-9949 (**EMERGENCIES ONLY**) SUCH AS:
  - ARRESTS
  - HOSPITAL EMERGENCY ROOM VISITS
  - EMERGENCY PSYCHOLOGICAL EVALUATIONS
  - ADMISSION TO A DETOX OR PSYCHIATRIC FACILITY

For all non-emergency calls for interpreter/cart services, please call the MCDHH interpreter Referral Department at 617-740-1600 voice or 617-740-1700 TTY. During daytime hours Monday – Fridays the emergency Interpreter Service hotline is answered by the staff of the MCDHH Interpreter Referral Service. During evenings, weekends and holidays, the hotline is forwarded to an answering service that will page an interpreter.

- C. All calls from persons who are deaf or have hearing loss or speech impairments must be accepted through the department's enhanced 9-1-1 Communication Center.

### **III. DEFINITIONS**

- A. *Auxiliary aids and services*: Communication aids that assist people who are deaf or who have hearing loss. They include, for example, hearing aids; cochlear implants; the exchange of written notes; telecommunications devices for the deaf (TDDs), also called text telephones (TTs) or teletype - writers (TTYs); telephone handset amplifiers; assistive listening systems; videotext displays; and hearing assistance dogs.
- B. *Lip-reading*: (also referred to as *speech reading*): The ability to use information gained from movements of the lips, face, and body to increase understanding.
- C. *Qualified Interpreter*: A person skilled in sign language or oral interpretation and transliteration, has the ability to communicate accurately with a deaf or hearing-impaired person and is able to translate information to and from such hearing-impaired person. An interpreter shall be deemed qualified, or intermediary as determined by the Office of Deafness.<sup>ii</sup>

- D. *Sign language*: Communication through the use of standardized hand or finger signs or gestures. American Sign Language (ASL) is the form of sign language most often used in the United States. Signs convey concepts or ideas, even though a sign may stand for a separate English word. Signing individual letters by finger spelling can supplement sign language. Just as there are regional variations (dialects) in spoken English, there are regional differences in sign language.

## **IV. PROCEDURES**

### ***A. Emergency Call Takers and Dispatchers***

- A.1. The dispatch center is equipped to receive E9-1-1 calls from TDD and computer modem users. All certified E9-1-1 call takers are trained to communicate with callers using the systems TTY and TDD equipment. Upon receiving an E9-1-1 TTY call, dispatchers shall communicate using TTY communications procedures.
- A.2. Dispatchers shall place a high priority on response to emergency calls for service from persons who are deaf or who have hearing impairment.
- A.3. The deaf and hearing impaired shall be provided with direct, equal access to all emergency services provided by this department.

### ***B. Communicating Encounters with Deaf or Hearing-Impaired***

#### **B.1. ENCOUNTERING DEAF OR HEARING-IMPAIRED PERSONS**

- B.1.a. Deaf persons may attempt to gain the attention of an employee by touching the officer when the officer is not facing them.
- B.1.b. This is how a hearing-impaired person commonly gains the attention of others, so that [s]he can see the other person's face and attempt to communicate.
- B.1.c. Employees should not interpret this touching as offensive or possibly threatening behavior.

#### **B.2. COMMUNICATING GENERALLY**

- B.2.a. Employees shall never assume that the person understands verbal communications until this can be confirmed by appropriate responses to questions or directives.
- B.2.b. Once someone is identified as a deaf or hearing-impaired person, employees shall attempt to determine (by written or other forms of communication) the person's preferred means of communication (e.g., sign language, lip-reading, reading and note writing, or speech).

B.2.c. Deaf or hard-of-hearing persons may require additional time to understand and respond to commands, instructions, and questions. Employees must be alert to indications that a person may be deaf or have a hearing impairment. Such indications include, but are not limited to the following:

- B.2.c.1) The appearance of bumper stickers, rear window decals, or visor notices/symbols indicating the disability;
- B.2.c.2) Failure of persons to respond to spoken commands or signals;
- B.2.c.3) Use of signs, hand signals, or gestures in an attempt to communicate;
- B.2.c.4) Display of cards by the person noting his or her hearing disability;
- B.2.c.5) Inability or difficulty of a person to follow verbal instruction or requests for information;
- B.2.c.6) A need to see the officer's face directly, suggesting that the person is attempting to lip-read;
- B.2.c.7) Evidence of assistive devices such as hearing aids, cochlear implants, or picture symbols; and
- B.2.c.8) Evidence of behaviors such as increased agitation or irritability, low frustration levels, withdrawal, poor attention, or impaired equilibrium.

### B.3. LIP READING

B.3.a. Employees attempting to communicate with a person who can lip-read should:

- B.3.a.1) Select a location that minimizes interference and distractions;
- B.3.a.2) Face the person so that eyes and mouth are clearly visible;
- B.3.a.3) Stand about three to six feet from the person;
- B.3.a.4) Avoid excessive body movement;
- B.3.a.5) Speak only after getting the person's full attention;
- B.3.a.6) Make questions and instructions short and simple;
- B.3.a.7) Speak clearly and slightly slower than usual; and
- B.3.a.8) Be prepared to repeat oneself using different words to rephrase any question.

B.3.b. The deaf who lip-read are visually oriented. Their interacting with and understanding of another person are determined primarily by their ability to see the officer.

#### B.4. SIGN LANGUAGE

B.4.a. A companion may interpret under emergency conditions or in minor situations when an interpreter is not available or required by law.

B.4.b. In all other situations, officers shall not rely on family members or friends for sign language interpretation, due to their potential emotional involvement, conflict of interest, and legal requirements.<sup>iii</sup>

B.4.c. Employees shall address all questions and directives to persons who lip-read by facing them directly and speaking in a moderately-paced conversational tone.

B.4.c.1) Shouting or using exaggerated mouth movements interferes with the ability to lip-read.

B.4.c.2) Understanding can be further degraded by the presence of facial hair, chewing gum, cigarettes, and so on.

#### B.5. HEARING AIDS

B.5.a. Employees cannot assume that persons who wear hearing aids can hear and fully understand what is being said.

B.5.a.1) Some people use hearing aids to provide sound awareness rather than to increase speech understanding.

B.5.a.2) Highly stressful situations, background noise, multiple speakers, and complex information and instructions can compromise the limited effectiveness of hearing aids.

B.5.b. Employees can test comprehension by seeking appropriate responses to simple questions or directives.

### **C. Interpreter Requirements**

#### C.1. STATUTORY REQUIREMENTS

C.1.a. General Law Ch. 221 §92A requires police to procure and pay for the services of a qualified interpreter for a deaf or hearing-impaired person whenever such person is arrested for an allegation of criminal law, including a local ordinance.

C.1.b. The arresting officer is statutorily responsible to make such arrangements.

C.1.c. No answer, statement, or admission, written or oral, made by a deaf or hearing-impaired person in response to any question by a

law enforcement officer (or prosecutor), operating in an official capacity, in any criminal proceeding may be used unless such a statement was made or elicited through a qualified interpreter.

C.1.d. Officers should be certain that when any deaf or hearing-impaired person executes a waiver, such person does so knowingly, intelligently, and voluntarily. In fact, in the case of a waiver of an interpreter, the court must make a special finding that any statement made by such deaf or hearing-impaired person was made knowingly, voluntarily, and intelligently.

#### C.2. COMMUNICATING WITHOUT AN INTERPRETER

C.2.a. The need for use of a sign language interpreter is governed generally by the length, importance, and complexity of the communication.

C.2.b. In simple enforcement situations, such as traffic stops, driver's license checks, or consensual police-public encounters, a notepad and pencil may provide effective communication.

C.2.c. During questioning or interrogation, a sign language interpreter is almost always required.<sup>iv</sup>

### ***D. Arrest Situations***

#### D.1. ARREST

D.1.a. Deaf and hearing-impaired persons may be arrested in situations where an officer has the right to make an arrest. See the department policy **1.11 - Arrests**.

D.1.b. A sign language interpreter need not be available in order for an officer to make an arrest of a subject where probable cause is established independent of interrogating the deaf or hearing-impaired suspect.<sup>v</sup>

D.1.c. If probable cause to make an arrest must be established through questioning or interrogation of a deaf or severely hearing-impaired person, a sign language interpreter is almost always required.<sup>vi</sup>

#### D.2. COMMUNICATION

D.2.a. Some deaf and hearing-impaired persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions. Therefore, officers shall not assume the effectiveness of this form of communication and should gain confirmation of a person's understanding whenever possible.

D.2.b. All essential communication with the suspect should be completed prior to the application of handcuffs, if possible.

D.2.c. If communication is necessary, officers may consider temporarily removing the handcuffs from a suspect, unless doing so would unnecessarily endanger the officer, the suspect or others.

### D.3. FIELD SOBRIETY TESTING

D.3.a. Some deaf or hearing-impaired persons have reduced verbal communication skills, speech that may be incoherent or otherwise resemble intoxication, or may have difficulty with equilibrium.

D.3.b. Officers should be aware when administering the standardized field sobriety tests to such persons.

D.3.b.1) Avoid using balance tests when equilibrium is an issue.

D.3.b.2) Factor in speech impediments when evaluating a suspect's speech.

D.3.b.3) Use the horizontal gaze Nystagmus test.

D.3.b.4) Breathalyzer and/or blood alcohol measurements (PBTs) should be employed as alternative tests when available.

D.3.c. Officers must avoid any evidentiary questions during field sobriety testing, as such questions require an interpreter.<sup>vii</sup>

### D.4. BOOKING

D.4.a. When booking a deaf or hearing-impaired person, officers may communicate with the person being booked through:

D.4.a.1) Written communications;

D.4.a.2) Verbal communications (if possible);

D.4.a.3) A companion of the suspect acting as an interpreter;

D.4.a.4) A non-certified interpreter; or

D.4.a.5) A certified interpreter.

D.4.B. Some deaf and hearing-impaired persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions.

D.5. RIGHTS: An officer must advise a deaf or hearing-impaired person of his or her rights through a qualified interpreter in order for a waiver of such rights to be valid.<sup>viii</sup>

D.6. QUESTIONING: Officers must be aware that any statements made by a deaf or hearing-impaired person, which are elicited without the use of a qualified interpreter, may not be admissible as evidence against the defendant. See **Statutory Requirements** in Section IV.C.1 of this policy.<sup>ix</sup>

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i

M.G.L. c. 221, §92A.

ii

M.G.L. c. 221, §92A.

iii

M.G.L. c. 221, §92A.

iv

*Com. v. Kelley*, 404 Mass. 459, 535 N.E.2d 1251 (1989): Defendant was entitled to an interpreter despite the diligent and good faith efforts of the Saugus Police Department.

v

M.G.L. c. 221, §92A.

vi

M.G.L. c. 221, §92A.

vii

M.G.L. c. 221, § 92A.

viii

*Com. v. Kelley*, 404 Mass. 459, 535 N.E.2d 1251 (1989).

ix

M.G.L. c. 221, §92A.