

## Persons with Disabilities

### 312.1 VERSION

**Agency Content**

Review Date	Effective Date	Approving Authority
02/25/19	07/09/18	Eric D. English, Chief of Police

### 312.2 POLICY AND PURPOSE

**Federal** **MODIFIED**

It is the policy of the Harrisonburg Police Department to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees, have equal access to law enforcement services, programs and activities. Employees must make efforts to communicate effectively with individuals with disabilities to include those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

The department will work with the City ADA coordinator regarding the Harrisonburg Police Department's efforts to ensure equal access to services, programs and activities.

### 312.3 ACCOUNTABILITY STATEMENT

**Agency Content**

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

### 312.4 DEFINITIONS

**Federal** **MODIFIED**

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

**Disability or impairment** - An individual who has or is regarded as being substantially limited in a major life activity, including hearing or sight. For hearing, this includes any person who is deaf or hard of hearing and includes those who experience hearing losses ranging from a mild hearing loss to a profound hearing loss. For sight, this includes any person who cannot see without assistance from other than ordinary eyeglasses or contacts and any person whose blindness has

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been certified by a duly licensed physician or optometrist (42 USC § 12101; Va. Code § 51.5-111; Va. Code § 51.5-60).

**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 and intermediary interpreters.

### **312.5 FACTORS TO CONSIDER**

Federal MODIFIED

Because the nature of any law enforcement contact may vary substantially from one situation to the next, employees of this department should consider all information reasonably available to them when determining how to effectively serve an individual(s) with a disability. Employees should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

- (a) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- (b) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- (c) The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

### **312.6 TYPES OF ASSISTANCE AVAILABLE**

Federal MODIFIED

Harrisonburg Police Department employees shall never refuse an available service to an individual with disabilities who is requesting assistance. The Department will not charge anyone to receive auxiliary aids, nor shall it require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Department will make every reasonable effort to provide equal access and timely assistance to disabled individuals through a variety of services.

Disabled individuals may choose to accept department-provided auxiliary aids or services or they may choose to provide their own.

Department provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

### **312.7 AUDIO RECORDINGS AND ENLARGED PRINT**

Federal MODIFIED

The Department may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, employees may read aloud from the appropriate form (e.g., a personnel complaint form) or provide forms with enlarged print.

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#### **312.8 QUALIFIED INTERPRETERS**

Federal MODIFIED

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee) if the individual to be interviewed normally relies on sign language or speech reading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or the investigation. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

- (a) Available within a reasonable amount of time but in no event longer than one hour if requested.
- (b) Experienced in providing interpretation services related to law enforcement matters.
- (c) Familiar with the use of VRS and/or video remote interpreting services.
- (d) Certified in either American Sign Language (ASL) or Signed English (SE).
- (e) Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (f) Knowledgeable of the ethical issues involved when providing interpreter services.

Employees should use department approved procedures to request a qualified interpreter at the earliest reasonable opportunity. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

#### **312.9 TTY AND RELAY SERVICES**

Federal MODIFIED VLEPSC - ADM.02.02 (j)

In situations where an individual without a disability would have access to a telephone (e.g., booking, attorney contacts), employees must also provide those who are deaf, are 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). Employees 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 (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

#### **312.10 COMMUNITY VOLUNTEERS**

Federal MODIFIED

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Department to provide interpreter services.

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Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department employees must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

#### **312.11 FAMILY AND FRIENDS**

**Federal** **MODIFIED**

While family or friends may offer to assist with interpretation, employees should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim/suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

Adults may be relied upon when (28 CFR 35.160):

- (a) There is an emergency or critical situation and there is no qualified interpreter reasonably available.
- (b) The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

#### **312.12 REPORTING**

**Federal** **MODIFIED**

Whenever any employee of this department is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Employees should document the type of communication services utilized and whether the individual elected to use services provided by the Department or some other identified source. If the individual's express preference is not honored, the member should document why another method of communication was used.

#### **312.13 CITIZEN CONTACTS**

**Federal** **MODIFIED**

Daily encounters with citizens, such as answering calls for service, traffic stops, serving warrants, crowd/traffic control and other routine field contacts may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

Employees and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that employees are able to effectively communicate the reason for a contact, the need for information and the meaning

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or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the officer is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, officers should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

#### 312.13.1 INITIAL AND IMMEDIATE CONSIDERATIONS

**Federal** **MODIFIED**

Employees should exercise special care in the use of all gestures and verbal and written communication to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

Employees should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, employees should ask the individual to communicate back or otherwise demonstrate his/her understanding.

In a non-emergency situation, when a employee knows or suspects an individual requires assistance to effectively communicate, the employee shall identify the individual's choice of auxiliary aid or service.

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services reasonably appear effective under the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The employee should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, is hard of hearing or has impaired speech must be handcuffed while in the custody of the Harrisonburg Police Department, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

#### 312.13.2 FIELD RESOURCES

**Federal** **MODIFIED**

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

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- (a) Hand gestures or visual aids with an individual who is deaf, is hard of hearing or has impaired speech.
- (b) Exchange of written notes or communications.
- (c) Verbal communication with an individual who can speech read by facing the individual and speaking slowly and clearly.
- (d) Use of computer, word processing, personal communication device or similar device to exchange texts or notes.
- (e) Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Employees should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

#### 312.14 CUSTODIAL INTERROGATIONS

Federal MODIFIED VLEPSC - ADM.02.02 (j), ADM.02.02 (b)

In an effort to ensure that the rights of individuals who are deaf, are hard of hearing or have speech impairment are protected during a custodial interrogation, this department will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

To ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

#### 312.15 ARRESTS AND BOOKINGS

Federal MODIFIED

If an individual with speech or hearing disabilities is arrested, the arresting officer shall use department-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the officer reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, officers should remain alert to the impediments that often exist when communicating with those who are deaf, are hard of hearing, have impaired speech or vision, are blind or have other disabilities. In the interest of the arrestee's health and welfare, to protect the safety and security of the facility and to protect individual rights, it is important that accurate medical screening and booking information be obtained. If necessary, officers should seek the assistance of a qualified interpreter whenever there is concern

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that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

#### **312.16 COMPLAINTS**

Federal MODIFIED

The Department shall ensure that individuals with disabilities who wish to file a complaint regarding members of this department are able to do so. The Department may provide a qualified interpreter or forms in enlarged print, as appropriate. Complaints will be referred to the ADA coordinator.

Qualified interpreters used during the investigation of a complaint should not be members of this department.

#### **312.17 COMMUNITY OUTREACH**

Best Practice

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

#### **312.18 TRAINING**

Federal MODIFIED VLEPSC - TRN.02.01 (a)

To ensure that all employees who may have contact with disabled individuals are properly trained, the Department will provide periodic training that should include:

- (a) Awareness and understanding of this policy and related procedures, related forms and available resources.
- (b) Procedures for accessing qualified interpreters and other available resources.
- (c) Working with in-person and telephone interpreters and related equipment.

The Training Officer shall be responsible for ensuring new employees receive training related to interacting with individuals who have disabilities, including those who are deaf, are hard of hearing, have impaired speech or vision or are blind. The Training Officer shall maintain records of all training provided and will retain a copy in each employee's training file in accordance with the established records retention schedule.