



Town of Lexington

Police Department

Subject: Dealing with Deaf and Hard of Hearing Persons

Reference: none

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By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

41P

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 2.19, "Dealing with the Hearing Impaired."

GENERAL CONSIDERATIONS AND GUIDELINES

Employees encountering people they believe are deaf or hard of hearing should never assume that that the person understands what is being communicated. This caution applies to all forms of communication, whether sign language, speech, writing, or reading.

Communication problems in police-public encounters provide the potential basis for misunderstandings, 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. This may be challenging given modern technology and the miniaturization and/or implanting of hearing aids.

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

It is the policy of the Lexington Police Department that:

1. Persons who are deaf or hard of hearing 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 conditions articulated within this policy.

2. This Department shall make available access to speech language interpreters as coordinated by the Office of Deafness. ⁱ
3. All calls from persons who are deaf or have hearing loss or speech impairments must be accepted through the Department's 9-1-1-communication center.

PROCEDURE

A. Definitions

1. **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 other devices as well as hearing assistance dogs.
2. **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.
3. **Qualified Interpreter:** A person skilled in sign language or oral interpretation and transliteration, has the ability to communicate accurately with a deaf or hard of hearing person and is able to translate information to and from such hard of hearing person. The Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) is the agency within Massachusetts that determines who is qualified as an interpreter.
4. **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.

B. Emergency Call Takers and Dispatchers

1. The dispatch center is equipped to receive 9-1-1 calls from TDD and computer modem users. All certified 9-1-1 call takers are trained to communicate with callers using the systems TTY and TDD equipment. Upon receiving a 9-1-1 TTY call, dispatchers shall communicate using TTY communications procedures.

41P-Dealing with Deaf and Hard of Hearing Persons

2. Dispatchers should place a high priority on response to emergency calls for service from persons who are deaf or who are hard of hearing.
3. The deaf and hard of hearing shall be provided with direct, equal access to all emergency services provided by this department.

C. Communicating Encounters with Deaf or Hard of Hearing

1. Encountering Deaf or Hard of Hearing Persons

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

2. Communicating Generally

- a. Employees should never assume that the person understands verbal communications until this can be confirmed by appropriate responses to questions or directives.
- b. Once someone is identified as a deaf or hard of hearing person, employees should 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).
- 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 may include, but are not limited to the following:
 - i. The appearance of bumper stickers, rear window decals, or visor notices/symbols indicating the disability;
 - ii. Failure of persons to respond to spoken commands or signals;
 - iii. Use of signs, hand signals, or gestures in an attempt to communicate;
 - iv. Display of cards by the person noting his or her hearing disability;
 - v. Inability or difficulty of a person to follow verbal instruction or requests for information;

41P-Dealing with Deaf and Hard of Hearing Persons

- vi. A need to see the officer's face directly, suggesting that the person is attempting to lip-read;
- vi. Evidence of assistive devices such as hearing aids, cochlear implants, or picture symbols; and
- viii. Evidence of behaviors such as increased agitation or irritability, low frustration levels, withdrawal, poor attention, or impaired equilibrium.

3. Lip Reading

- a. Employees attempting to communicate with a person who can lip-read should:
 - i. Select a location that minimizes interference and distractions;
 - ii. Face the person so that eyes and mouth are clearly visible;
 - iii. Stand about three to six feet from the person;
 - iv. Avoid excessive body movement;
 - v. Speak only after getting the person's full attention;
 - vi. Make questions and instructions short and simple;
 - vii. Speak clearly and slightly slower than usual; and
 - viii. Be prepared to repeat one-self using different words to rephrase any question.
- b. The deaf person who lip-reads is visually oriented. Their interacting with and understanding of another person are determined primarily by their ability to see the officer.
- c. Employees should address all questions and directives to persons who lip-reads by facing them directly and speaking in a moderately paced conversational tone.
 - i. Shouting or using exaggerated mouth movements interferes with the ability to lip-read.
 - ii. Understanding can be further degraded by the presence of facial hair, chewing gum, cigarettes, and so on.

4. Sign Language

- a. A companion may interpret under emergency conditions or in minor situations, when an interpreter is not available or required by law.
- b. In all other situations, officers should not rely on family members or friends for sign language interpretation, due to their potential emotional involvement, conflict of interest, and legal requirements.ⁱⁱ

5. Hearing Aids

- a. Employees cannot assume that persons who wear hearing aids can hear and fully understand what is being said.
 - i. Some people use hearing aids to provide sound awareness rather than to increase speech understanding.
 - ii. Highly stressful situations, background noise, multiple speakers, and complex information and instructions can compromise the limited effectiveness of hearing aids.
- b. Employees can test comprehension by seeking appropriate responses to simple questions or directives.

D. Interpreter Requirements

1. Statutory Requirements

- a. General Law Ch. **221 §92A** requires the arresting officer to procure and pay for the services of a qualified interpreter for a deaf or hard of hearing person whenever such person is arrested for an allegation of criminal law, including a local ordinance.
- b. No answer, statement, or admission, written or oral, made by a deaf or hard of hearing 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. Officers should be certain that when any deaf or hard of hearing 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 hard of hearing person was made knowingly, voluntarily and intelligently.
- d. Generally, a waiver of rights will not be obtained and an interpreter will be contacted consistent with the guidelines in this policy.

2. Communicating without an Interpreter

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

41P-Dealing with Deaf and Hard of Hearing Persons

- 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. During questioning or interrogation, a sign language interpreter is almost always required.ⁱⁱⁱ

E. Arrest Situations

1. Arrest

- a. Deaf and hard of hearing people are subject to arrest like any other person in those situations where an officer has the right to make an arrest. See the Department policy on **Arrest**.
- 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 hard of hearing suspect.^{iv}
- c. If probable cause to make an arrest must be established through questioning or interrogation of a deaf or hearing-impaired person, a sign language interpreter will be required.^v

2. Communication

- a. Some deaf and hard of hearing persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions. Therefore, officers should not assume the effectiveness of this form of communication and should gain confirmation of a person's understanding whenever possible.
- b. All essential communication with the suspect should be completed prior to the application of handcuffs, if possible.
- 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.

3. Field Sobriety Testing

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

41P-Dealing with Deaf and Hard of Hearing Persons

- b. When administering standardized field sobriety tests officers should consider:
 - i. Avoid using balance tests when equilibrium is an issue.
 - ii. Factor in speech impediments when evaluating a suspect's speech.
 - iii. Use the horizontal gaze Nystagmus test, if trained.
 - iv. Breathalyzer and/or blood alcohol measurements (PBTs) should be employed as alternative tests when and if available.
 - c. Officers must avoid any evidentiary questions during field sobriety testing, as such questions require an interpreter.^{vi}
4. Booking
- a. When booking a deaf or hard of hearing person, officers may communicate with the person being booked through:
 - i. Written communications;
 - ii. Verbal communications (if possible);
 - iii. A companion of the suspect acting as an interpreter;
 - iv. A non-certified interpreter; or
 - v. A certified interpreter.
 - b. Some deaf and hard of hearing persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions.
5. RIGHTS: An officer must advise a deaf or hard of hearing person of his or her Miranda and other rights through a qualified interpreter in order for a waiver of those rights to be valid.^{vii}
6. QUESTIONING: Officers must be aware that any statements made by a deaf or hard of hearing person, which are elicited without the use of a qualified interpreter, may not be admissible as evidence against the defendant. See **Statutory Requirements** in this policy.

F. Interpreter Contact Information

1. In situations involving the need for an interpreter the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) shall be contacted for an interpreter. Their contact information is listed below:

MCDHH-Executive Office
150 Mount Vernon Street, Fifth Floor
Dorchester, MA 02125

Phone-617-740-1600
Fax- 617-740-1880
TTY- 617-740-1700
Emergency/After hours - 1-800-249-9949

ⁱ M.G.L. c. 221, §92A.

ⁱⁱ M.G.L. c. 221, §92A.

ⁱⁱⁱ *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.

^{iv} M.G.L. c. 221, §92A.

^v M.G.L. c. 221, §92A.

^{vi} M.G.L. c. 221, § 92A.

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