

Communications with Persons with Disabilities

368.1 PURPOSE AND SCOPE

This policy provides guidance to all members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

368.1.1 DEFINITIONS

Definitions related to this policy include:

Americans with Disability Act (ADA) - The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government' programs and services.

Auxiliary Aids and Services – Tools used to communicate with people who have a disability or impairment. They include but are not limited to, Qualified Interpreters (defined below) on-site or through video remote interpreting ("VRI") services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones ("TTYs"), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally (by means of the ears or the sense of hearing) delivered information available to individuals who are deaf or hard of hearing (28 C.F.R. § 35.104).

Communication Disability - is defined as a person with a disability (as defined by the ADA, 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104) that impacts their ability to communicate.

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

Field Assessment Form (FAF) – an infographic which allows a person with a Communication Disability to point to a preferred communication icon.

Qualified interpreter - An interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the individual who is deaf or hard of hearing's language skills and education. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators (28 C.F.R. § 35.104). To be a Qualified Interpreter, the interpreter must be able to interpret in the language the individual with a disability uses (e.g., ASL or Signed English).

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368.2 POLICY

It is the policy of the Vancouver Police Department to reasonably ensure that people with disabilities, including but not limited to victims, witnesses, suspects, arrestees or general members of the public requesting police service have equal access to law enforcement services, programs and activities.

In determining the type of Auxiliary Aid or Service necessary to comply with the ADA, VPD employees will give primary consideration to the expressed preference for a particular Auxiliary Aid or Service by an individual who has a Communication Disability (28 C.F.R. § 35.160). Whenever a member of the community self-identifies as having a Communication Disability, or whom the Department member reasonably believes to have a Communication Disability, the Department member shall use the Department approved Field Assessment Form (FAF) to determine the expressed preference for an Auxiliary Aid or Service. If using the FAF compromises officer safety, the Department member will defer use until the immediate safety issues are resolved. When there is an emergency involving an imminent threat to the safety or welfare of an individual or the public, VPD may deviate from giving primary consideration to the expressed preference until the emergency has passed.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

368.3 AMERICANS WITH DISABILITIES ACT (ADA) COORDINATOR

Pursuant to 28 CFR 35.107, the Chief of Police shall delegate certain responsibilities to an ADA Coordinator. The ADA Coordinator shall be appointed by, and directly responsible, to the Administration Bureau Assistant Chief or the authorized designee. The VPD Audit Sergeant is currently assigned the duties of VPD ADA Coordinator. The ADA Coordinator's name, work location address, email address and work telephone number shall be on the department website as well as posted conspicuously in public areas of all precincts.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

- (a) Working with the City ADA coordinator regarding the Vancouver Police Department's efforts to ensure equal access to services, programs, and activities.
- (b) Shall have training relating to the legal rights of persons with disabilities, including but not limited to the obligations of public entities under federal and state laws covering individuals with Communication Disabilities.
- (c) Developing reports, new procedures, or recommending modifications to this policy.
- (d) Acting as a liaison with local disability advocacy groups or other disability groups regarding access to Department services, programs and activities.
- (e) Ensuring that a list of qualified interpreter services is maintained and available to each Shift Supervisor and Clark Regional Emergency Services Agency (CRESA). The list should include information regarding the following:
 1. Contact information

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2. Availability

- (f) Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.
- (g) Ensuring signage is posted in appropriate areas, indicating that auxiliary aids or services are available free of charge to people with disabilities.
- (h) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to Department services, programs and activities.
- (i) To comply with 28 CFR 35.107, the ADA Coordinator, or their upper chain of command, will work with PSU to investigate communication disability complaints
- (j) Maintain a log of all communication with persons with communication disabilities if they are a victim, witness or suspect in a crime.

368.4 FACTORS TO CONSIDER

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this Department should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members 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) Members should not assume that effective communication is being achieved. The fact an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members should ask the individual, if time allows, to communicate back or otherwise demonstrate their understanding.
- (b) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- (c) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- (d) Use of a Video Remote Interpreting service may not be appropriate when an individual has limited ability to move their head, hands or arms; vision or cognitive issues; significant pain or emotional instability; or visibility of the screen. In such cases, VPD will contact its contracted agency as soon as is practicable to obtain an in-person interpreter.

368.5 INITIAL AND IMMEDIATE CONSIDERATIONS

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems.

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Members 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.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of Auxiliary Aid or Service. Members will use an approved Field Assessment Form to inquire as to the individual with a Communication Disability's preference for Auxiliary Aids and Services to achieve effective communication, unless doing so would compromise safety.

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

Factors to consider when determining whether an alternative method is effective include:

- (a) The methods of communication usually used by the individual.
- (b) The nature, length and complexity of the communication involved.
- (c) The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that 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 member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing or has impaired speech must be handcuffed while in the custody of the Vancouver 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.

In cases where there is an imminent threat to the safety or welfare of an individual or the public, VPD must timely provide a Qualified Interpreter when the imminent threat to safety has passed.

368.6 TYPES OF ASSISTANCE AVAILABLE

Vancouver Police Department members shall never refuse to assist an individual with disabilities who is requesting assistance because of an actual or perceived disability. The Department will not charge anyone to receive Auxiliary Aids or Services, nor shall they 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 individuals who are disabled through a variety of services.

A person who has a Communication Disability may choose to accept Department provided Auxiliary Aids or Services, or they may choose to provide their own.

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Department provided Auxiliary Aids or Services may include, but are not limited to, the assistance methods described in this policy. (e.g., see subsections 368.7, 368.8, and 368.9 of this Policy)

368.7 AUDIO RECORDINGS AND ENLARGED PRINT

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, members may read aloud from the appropriate form, for example a personnel complaint form, or if available provide forms with enlarged print.

368.8 QUALIFIED INTERPRETERS

A Qualified Interpreter shall be provided whenever it is necessary to afford equal access to programs, activities or services. 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 speechreading (lip-reading) to understand what others are saying. The Qualified Interpreter shall 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 (for VRI services) and 24 hours for in person services if requested.
- (b) Experienced in providing interpretation services related to law enforcement matters.
- (c) Familiar with the use of VRI 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.

Members should use Department approved procedures to request a Qualified Interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

368.9 VIDEOPHONES, 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 or hard of hearing, have impaired speech or vision, or are blind the opportunity to place calls using an available Videophone or 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 Videophone interpretation services, TTY and TDD communications.

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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.

VPD will ensure that the privacy of telephone calls by individuals using a videophone is equal to that of other telephone calls.

VRI will not be used whenever it is not effective, for example, due to an individual's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain or emotional instability; or visibility of the screen. In such cases where VRI is not effective, VPD member will contact the contracted language service provider as soon as is practicable to obtain an on-site interpreter. The interpreter must arrive within 24-hours of a request.

368.10 COMMUNITY VOLUNTEERS, FAMILY AND FRIENDS

While community volunteers, family or friends may offer to assist with interpretation, members 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). In general, members shall not rely on an adult accompanying the individual with a disability to interpret or facilitate communication except:

- (a) In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
- (b) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and the reliance on that adult for such assistance is appropriate under the circumstances. (28 CFR 35.160)

Minor children shall not be relied upon to interpret or facilitate communication, except:

- (a) In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

368.11 REPORTING

Any Department employee who communicates with a person with a communication disability, who is a victim, suspect or witness of a crime, shall report and document the encounter in the related police report. The type of information required in the report is the following:

1. The Auxiliary Aid or Service provided.
2. If there was a delay in providing the Auxiliary Aid or Service, including but not limited to the response time of an on-site interpreter.
3. If no Auxiliary Aid or Service was provided, an explanatory statement regarding the reason for the delay or non-provision of the requested service (i.e. an imminent threat to the person or employee).

All police reports of this type shall be forwarded to the Department ADA Coordinator.

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No report is required for non-criminal police service interaction.

368.12 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

When a member of the community with a Communication Disability indicates their communication needs (either using the FAF, or through any other form of communication), Department members will timely provide the appropriate Auxiliary Aid or Service to the community member, giving primary consideration to the form of communication identified by the individual. If the Department member is uncertain how to proceed, they will immediately contact their supervisor for guidance.

In addition to circumstances in which a community member expressly requests the provision of a Qualified Interpreter (as defined by this policy), Department members must also timely provide a Qualified Interpreter in the following circumstances:

- (a) When conducting a criminal investigation involving a person (whether as a victim, witness, or suspect) who has a Communication Disability;
- (b) When conducting a criminal investigation involving a minor child (whether as a witness, victim, or suspect) and the parent(s), guardian, or custodian has a Communication Disability; and
- (c) Whenever a Department member believes a Qualified Interpreter is necessary to achieve Effective Communication.

To ensure effective communication with a person with a Communication Disability, members and/or supervisors must continually 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 members are able to effectively communicate the reason for a contact, the need for information and the meaning 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 has a Communication Disability requires communications assistance.

Members should obtain the assistance of a Qualified Interpreter before placing an individual with a Communication 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.

368.13 CUSTODIAL INTERROGATIONS

In an effort to ensure the rights of individuals who have a Communication Disability are protected during a custodial interrogation, this Department will provide Qualified Interpreter services before beginning an interrogation unless exigent circumstances exist. The use of a VRI service should

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be considered, where appropriate, if a live interpreter is not available. Miranda warnings shall be provided to suspects who have a Communication Disability by a Qualified Interpreter.

If the suspect is under arrest for a felony crime, or the suspect is a juvenile under arrest for any crime, any custodial interrogation must be audio recorded. If the custodial interrogation takes place at a jail, police or sheriff's station, holding cell, or correctional or detention facility, the electronic recording must be both audio and video. There are limited exceptions to the electronic recording requirement such as spontaneous statements, exigent circumstances, refusal to be recorded by the suspect, interview by another agency, reasonable belief that recording is not required, reasonable belief of a safety concern or equipment malfunction. Officers that do not electronically record a custodial interrogation must author a report explaining why the interview was not recorded.

Prior to the custodial interrogation of a juvenile (any person under the age of eighteen) they shall be provided with access to an attorney for consultation prior to waiving any of their constitutional rights. The juvenile is prohibited from waiving their right to be provided access to an attorney.

368.14 ARRESTS AND BOOKINGS

If an individual with speech or hearing disabilities is arrested, the arresting officer shall use Department approved procedures to provide a qualified interpreter as soon as reasonably practicable, unless the individual indicates 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, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, 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, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or 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 of an officer.

368.15 COMPLAINTS

The Department shall ensure 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 Department ADA Coordinator.

Investigations into such complaints shall be handled in accordance with the Internal Affairs Policy. Investigators shall use Qualified interpreters.

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368.16 COMMUNITY OUTREACH

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.

368.17 TRAINING

To ensure all members who may have contact with individuals who are disabled 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) Effective communication requirements of the ADA.
- (d) Prohibitions against using persons other than qualified interpreter for interpretations and the allowed exceptions.
- (e) How and when to use the FAF.
- (f) How and when to obtain a sign language interpreter or other auxiliary aids and services.
- (g) The modification requirement when handcuffing a person with a Communication Disability.
- (h) Working with in-person and telephone interpreters and related equipment.
- (i) The Department's prohibition against discrimination, retaliation, or coercion against any person who made, or is making, a complaint for exercising their rights of the ADA.
- (j) The name and base responsibilities of the Department ADA Coordinator and how they can be reached.

The Training Sergeant shall be 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. Those who may have contact with such individuals should receive refresher training at least once every two years thereafter. The Training Sergeant shall maintain records of all training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.