

Police and Law Enforcement Agency Responsibilities to Deaf Individuals

State and local law enforcement agencies have a federal mandate to ensure adequate and appropriate communication with deaf and hard-of-hearing persons. Without effective communication in dealing with law enforcement personnel, serious violations of constitutional and civil rights can occur. Whether a sign language interpreter or other auxiliary aid is required depends on the type of communication and the needs of the deaf or hard of hearing individual. But even if an interpreter is not required, police officers should take other steps to ensure effective communication, such as writing information and making other accommodations in their usual practices. This mandate is found in two federal laws protecting the rights of individuals with disabilities.

SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 provides that: ". . . no otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Many police departments in the United States receive financial assistance from one or more federal agencies and are subject to the requirements of Section 504. Each federal agency must issue regulations explaining the Section 504 responsibilities of its funding recipients and outlining its own Section 504 enforcement procedures.

The sources of federal assistance to police departments are varied. Many receive Department of Justice or Department of Transportation (DOT) funding. Other law enforcement agencies receive additional funding from the United States Department of Health and Human Services (HHS).

REQUIREMENT OF QUALIFIED SIGN LANGUAGE INTERPRETERS

The Section 504 Regulations of each of the agencies named above require law enforcement offices to provide qualified sign language interpreters for communication with persons who rely on sign language. The Department of Justice (DOJ) Regulation, 28 C.F.R. Part 42, states: A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program receiving Federal financial assistance. Such auxiliary aids may include . . . qualified interpreters Department officials may require recipients employing fewer than fifteen persons to provide auxiliary aids when this would not significantly impair the ability of the recipient to provide its

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benefits or services. 28 C.F.R. 42.503(f).

The Department of Justice Analysis of this Regulation as it relates to law enforcement agencies elaborates on this requirement: "Law enforcement agencies should provide for the availability of qualified interpreters (certified where possible, by a recognized certification agency) to assist the agencies when dealing with hearing-impaired persons. Where the hearing-impaired person uses American Sign Language for communication, the term "qualified interpreter" would mean an interpreter skilled in communicating in American Sign Language. It is the responsibility of the law enforcement agency to determine whether the hearing-impaired person uses American Sign Language¹ or Signed English to communicate. "

If a hearing-impaired person is arrested, the arresting officer's Miranda warning should be communicated to the arrestee on a printed form approved for such use by the law enforcement agency where there is no qualified interpreter immediately available and communication is otherwise inadequate. The form should also advise the arrestee that the law enforcement agency has an obligation under Federal law to offer an interpreter to the arrestee without cost and that the agency will defer interrogation pending the appearance of an interpreter. 45 Fed. Reg. 37630 (June 3, 1980), Analysis of Department of Justice Regulations, citation omitted, emphasis added.

This Analysis makes many important points in regard to the provision of interpreters to deaf individuals. First, neither the Regulation nor the Analysis limits the provision of interpreter services to deaf arrestees. Victims and complainants should certainly also be provided with those services. In addition, deaf and hard-of-hearing persons attending programs and functions sponsored by a law enforcement agency, such as informational workshops and educational programs, must be provided with a qualified interpreter or other auxiliary aids upon request.

The critical importance of the interpreter's qualifications is stressed in the Analysis. The law enforcement agency should ensure securing of qualified interpreters by contacting the local or state chapter of the Registry of Interpreters for the Deaf (RID) for a list of certified and qualified interpreters. If an interpreter is not achieving adequate communication as judged by the deaf person, the interpreter, or a law enforcement official, another interpreter must be secured who is qualified to interpret for that individual. The Analysis specifically places the responsibility on the recipient agency to ascertain the type of sign language with which the deaf individual feels most comfortable, and then to secure an interpreter who is competent in that language.

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The obligations of the law enforcement agency to deaf or hard of hearing persons who have been arrested or held for questioning are founded in Constitutional as well as statutory law. Courts have suppressed evidence obtained from a deaf defendant where it was found that the Constitutional Rights warning was not adequately communicated to the defendant. *State of Maryland v. Barker*, Crim. No's. 17,995 and 19,518 (Md. Cir. Ct. Dec. 8, 1977); *State of Oregon v. Mason*, Crim. No. C 80-03-30821 (Or. Cir. CT May 27, 1980). In both of the above cases, the warnings were conveyed in sign language, but were not broken down to the defendant's language level. Securing of an interpreter with an RID Legal Skills Certificate for a timely interpretation of the rights, accompanied with careful explanation and breakdown of every legal term and sign, is one way a law enforcement agency may prevent objections to the adequacy of this communication, as well as comply with the legal requirements of Section 504. Presentation of a printed Advice of Rights form without an interpreter will seldom, if ever, be sufficient.

Questioning of deaf persons should also take place only with an interpreter present in order to comply with Section 504 and to achieve reliable communication. Many law enforcement agencies videotape all communications with deaf defendants in order to be able to substantiate the effectiveness of the communication and the quality of the interpretation.

All deaf persons must be informed of the law enforcement agency's obligation to have a free, qualified interpreter present during all communications. This can usually be achieved, as the Analysis suggests, by use of a printed card before the arrival of the interpreter. However, the agency must be aware of the fact that some deaf persons have very limited English language skills, and will require an interpreter to ensure comprehension of even this message.

THE AMERICANS WITH DISABILITIES ACT

As of January 26, 1992, all state and local police departments, regardless of receipt of federal funds, were prohibited from discrimination based on disability. This federal mandate is found in Title II of the Americans with Disabilities Act, 42 U.S.C. §§12131-12134. The U.S. Department of Justice has issued regulations explaining the requirements of that Act, 28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991) (U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services).

Under the ADA and its regulation, local and state law enforcement agencies are required to provide qualified sign language interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals. 28 C.F.R. §35.160. Deference must be given to the deaf or hard of hearing

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individual's choice of what auxiliary aid he or she needs. 28 C.F.R. §28 C.F.R. §35.160(b)(2).

The analysis to the Title II regulation to the ADA specifies where an interpreter may be needed. It states: "Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication." 56 Fed. Reg. 35694 (July 26, 1992), at 35712.