

MODEL POLICY TEMPLATE
December 2011
POLICE/SHERIFF'S DEPARTMENT POLICIES
FOR
INDIVIDUALS WHO ARE DEAF, HARD OF HEARING, OR DEAFBLIND

POLICY:

(Police/Sheriff's Department name) is committed to serving all individuals according to their needs. Recognizing that persons who are deaf, hard of hearing, or deafblind have special needs, (Police/Sheriff's Department name) has a commitment and an obligation to meet those needs.

If (police/sheriff's department) personnel recognize or have any reason to believe that a suspect, potential perpetrator, potential victim, inmate, or other person who has a need to communicate with the department, is deaf, hard of hearing, or deafblind, said personnel must advise the person that appropriate auxiliary aids and services including interpreters will be provided free of charge when necessary for effective communication. The responsible staff person will ensure that such aids and services including interpreters are offered, utilized, and documented. All other personnel will direct that person to the appropriate Program Administrator(s). This offer and advice will likewise be made in response to any overt request for appropriate auxiliary aids or services including interpreters.

Primary consideration will be given to the auxiliary aid requested by the suspect, potential perpetrator, potential victim, or inmate and will be provided unless there is another equally effective means of communication.

LEGAL BASIS:

The Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (ADA), Section 504 of the Rehabilitation Act 29 U.S.C. §794 and 28 C.F.R. §42.503(f), and the Minnesota Human Rights Act, Minn. Stat. §363.01 *et seq.*

These laws impose requirements on various public entities, including law enforcement facilities in Minnesota. These laws prohibit discrimination against individuals with disabilities, which includes depriving them of the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation. This requires that persons who are deaf, deafblind, or hard of hearing, receive the same benefits of legal services as persons who do not have a hearing loss, unless the public entity can prove that doing so would be unduly burdensome, or would change the essential nature of the service the entity provides. Minnesota law specifically requires that public entities ensure effective and equal communication accessibility.

What accommodations are necessary for deaf, deafblind, and hard of hearing persons?

As per Section 504: The Justice Department's Section 504 regulations are specific in their requirements for police departments that receive financial assistance. A recipient of federal aid must take appropriate steps to ensure that communications with deaf people are as effective as communications with hearing people. They require that police departments provide appropriate aids and services (including interpreters and TTY's/TDD's and/or Videophones) in order to ensure effective communication with deaf people. 35 C.F.R. §160.

As per ADA: Title II of the ADA prohibits discrimination against people with disabilities in state and local government services, programs, and activities. Police officers need to ensure effective communication with individuals who are deaf, hard of hearing, or deafblind. This may require interpreters or other auxiliary aids. Auxiliary aids and services include: Qualified interpreters* onsite or through video remote interpreting (VRI)** , 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 projects and systems including text telephones (TTYs), video phones (VPs), and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. §35.104

Telecommunications: (a) Where a public entity communicates with the public by telephone, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or who have speech impairments. (b) When a public entity uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems. (c) A public entity shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls. 28 C.R.F. §161

*Qualified interpreter means an interpreter who, via video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include...sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 35.104

NOTE: The standard for "qualified" interpreters in legal settings in the state of Minnesota is: RID:SCL (Registry of Interpreters for the Deaf, Specialist Certificate Legal), RID CI

and CT (Registry of Interpreters Certificate of Interpretation and Certificate of Transliteration), RID CSC (Registry of Interpreters for the Deaf, Comprehensive Skills Certificate), NAD (National Association of the Deaf) Levels IV or V, or RID-NAD NIC.

****Video remote interpreting (VRI) service means an *interpreting service* that uses video conference technology over dedicated lines or wireless technology offering high-speed, widebandwidth video connection that delivers high-quality video images. 28. C.F.R. § 36.104**

NOTE: VRI can be effective in some circumstances but not in others. For example, in a police interrogation/interview that requires the Miranda Warning. This restriction may change, but it is suggested to use caution until it is clear what will work effectively.

In Miranda v. Arizona (1966), the U.S. Supreme Court recognized that questioning by police in the stationhouse or jail is inherently coercive and undermines the privilege against self-incrimination. As a result of this decision, police are required to “effectively inform” accused people of their constitutional rights before any questioning can take place. Without use of a qualified interpreter, most deaf people would not be able to fully understand their rights, and any waiver of their rights would not meet the Court’s standard of being voluntary, knowing, and intelligent.

As per Minnesota State Law: The Minnesota Human Rights Act specifically requires that all public entities, including law enforcement agencies, must ensure effective and equal communication with deaf people. Minn. Stat. §363.03, subd. 4 and §363.01, subd. 31. Elsewhere, the Minnesota Legislature stated: “It is hereby declared to be the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings.” Minn. Stat. §611.30

Other state laws explicitly address the obligations to provide effective communication at the time of apprehension or arrest: “Following the apprehension or arrest of a person handicapped in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention.” Minn. Stat. § 611.32 Subd. 2

DEFINITIONS:

Qualified Interpreter

A “qualified interpreter” is an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any specialized vocabulary necessary for effective communication in a legal setting.

Someone who has only a rudimentary familiarity with sign language or fingerspelling is not a “qualified sign language interpreter.” Likewise, someone who is fluent in sign language but who does not possess the training and ability to process spoken

communication into the proper signs or to observe someone signing and change their signed or fingerspelled communication into spoken words is not a “qualified interpreter.”

Someone who is a qualified interpreter for a person who uses American Sign Language (ASL) may not be a qualified interpreter for an individual who uses a different sign language, such as one based on Russian rather than English. Likewise, an interpreter who knows tactile interpreting may be the only interpreter who is qualified to interpret for someone who is both deaf and blind.

The standard in Minnesota is that interpreters in legal settings hold one of the following certifications: RID:SCL, RID CI and CT, RID CSC, NAD Level 5, NAD Level 4, or RID-NAD NIC. Attached is an explanation of these certifications.

When to use qualified interpreters:

A qualified interpreter will be used in any and all situations where clear and effective communication is necessary. Situations in which the presence of a qualified interpreter may be necessary include, but are not limited to:

- ❑ Miranda Warning
- ❑ Booking Procedures
- ❑ Interviews
- ❑ Reporting a Crime
- ❑ Witness Statement
- ❑ Jail/Prison classes/meetings such as anger management, AA, church, bible study

Restricted use of certain persons to facilitate communication:

Due to confidentiality, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, the department will never require or coerce a family member, companion, case manager, advocate, or friend of an individual to interpret. If the individual requests that this person facilitate communication, and if this person is willing to facilitate communication, and if this choice is necessary or appropriate under the circumstances, such decision will be noted in the department’s notes/case file. Special consideration will be given to privacy issues that may arise.

Timely provision of interpreter when necessary:

Personnel will make all reasonable efforts to ensure that interpreters are provided as quickly as possible after they are requested or determined to be necessary. A call to an interpreter referral agency, or to an interpreter, will be made within ten minutes after the request or determination is made. Until the interpreter arrives, personnel will attempt to inform the individual that an interpreter has been called and the approximate time when the interpreter is expected to arrive. Booking and/or interview procedures will be stopped and resumed only after an interpreter arrives.

Auxiliary Aids

An “auxiliary aid” is a communication aid which can include: exchange of written notes, telecommunication devices (TDDs) such as teletypewriters (TTYs) or text telephones (TTs), video phones (VPs), assistive listening devices, handset amplifiers, and sign language interpreters.

Primary Consideration

The choice of auxiliary aid and service requested by the individual who is deaf, hard of hearing, or deafblind shall be given primary consideration and provided unless there are other equally effective means of communication.

Telephones and Related Equipment

Department will provide the following:

- ❑ ***TTY/TDDs in public areas.*** Wherever a public telephone is made available (whether public pay telephone, public closed circuit telephones, or otherwise), the department will make a TTY device available. This can be either permanently installed TTYs or a sufficient number of portable TTYs.
- ❑ ***Shelves and outlets.*** Wherever portable TTYs are made available as an alternative to installed TTYs, and wherever there is a bank of three or more public telephones, the department will provide shelves and electrical outlets for use of TTYs.
- ❑ ***Signs indicating location of TTYS.***
 - (1) Wherever public telephones are available but TTYs are not permanently installed, the department will post signs indicating the location of the nearest portable or permanently installed TTY; and
 - (2) Wherever TTYs are permanently installed, the department will post signs to indicate their location.
- ❑ ***Volume control telephones.*** The department will ensure that no less than twenty-five (25) percent of all its public telephones are equipped with volume control mechanisms. These telephones with volume control will be dispersed among the public telephones throughout the department. Wherever these mechanisms are located, the department will post signs to indicate their location.
- ❑ ***Hearing aid compatible telephones.*** The department will ensure that no less than twenty-five (25) percent of all of its public telephones are hearing aid compatible. These telephones that are hearing aid compatible will be dispersed among the public telephones throughout the department. Wherever these compatible phones are located, the department will post signs to indicate their location.

- **Video Phone.** The department will provide access to videophone communication through a VP or a web cam attached to a computer with appropriate software to allow point-to-point videophone calls.

Storage and Availability of Equipment:

Portable equipment is readily accessible to all department personnel at all times of the day and night. See *Procedures* to determine exact location of equipment and how to access.

Training of Department Personnel:

Every employee receiving new employee orientation, will receive information and training regarding working with and sensitivity to deaf, hard of hearing and deafblind suspects, potential perpetrators, potential victims and inmates who are deaf, hard of hearing, or deafblind.

All other employees will receive information and training on an annual basis.

All department personnel who receive incoming telephone calls from the public will receive specific training in using TTYs and using telephone relay service to communicate with persons who are deaf, hard of hearing, or deafblind.

POLICE AND SHERIFF'S DEPARTMENT PROCEDURES FOR INDIVIDUALS WHO ARE DEAF, HARD OF HEARING, OR DEAFBLIND

The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration and frequency with which they will be provided, will be made at the time an appointment is scheduled or on the arrival of a deaf, hard of hearing, or deafblind individual at the department.

The department will offer the individual appropriate auxiliary aids and services, or will respond to the individual's request for auxiliary aids and services. This will be documented in relevant notes or case file.

To access an interpreter:

During regular business hours, _____ to _____, contact the following person(s):

@(phone number) _____

or (pager/cell number) _____

During non-business hours, including holidays and weekends, contact the following person(s)/agencies:

@(phone number) _____

or (pager/cell number) _____

To access a TTY, VP, or other auxiliary aids:

Portable equipment for use in public areas and patient rooms is stored: _____

During regular business hours, contact: _____

@(phone number) _____

or (pager/cell number) _____

During non-business hours, contact: _____

@(phone number) _____

or (pager/cell number) _____