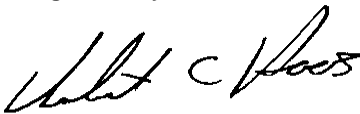


 <p>Cambridge Police Department</p>	POLICY & PROCEDURES		No. 232
	Subject/Title: Persons Who are Deaf or Hard of Hearing		
	Issuing Authority:  <hr/> Robert C. Haas Police Commissioner		Review Date: Apr. 5, 2013
			Issue Date: August 15, 2013
		Effective Date: August 29, 2013	Rescinds:
References/ Attachments: Reviewed by the Persons w/ Disabilities Commission		Accreditation Standards:	

I. PURPOSE:

The purpose of this directive is to describe how members of this department will respond to various situations that might involve persons who are deaf or hard of hearing, to include the following:

- Recognizing and responding appropriately to persons who are deaf or hard of hearing;
- Communicating with persons who are deaf or hard of hearing;
- When there are requirements for having a sign language interpreter or Communication Access Realtime Translation (CART) services present; and
- Arrest situations involving persons who are deaf or hard of hearing.

II. POLICY:

It is the policy of this police department that:

- Persons who are deaf or hard of hearing (hearing impaired) - whether they be victims, witnesses, or suspects – 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 this policy.
- This department shall make available access to sign language interpreters or Communication Access Realtime Translation (CART) services, as coordinated by the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) when necessary to ensure effective communication between members of the public who are deaf or hard of hearing and police personnel .¹
- All calls from persons who are deaf or hard of hearing or have speech impairments must be accepted through the city’s Emergency Communications Center (ECC).

¹ M.G.L. c. 221, § 92A

III. GENERAL CONSIDERATIONS & GUIDELINES:

Employees dealing with persons who are suspected of being deaf or hard of hearing should never assume that the person understands the officer; the officer should make sure that he/she understands. This caution applies to all forms of communication, whether sign language, speech, writing, or reading.

Communication problems in police-public encounters provide the basis for misunderstandings and potential problems, frustration, and embarrassment. Therefore, it is important that employees are able to recognize persons with hearing and communication disabilities, differentiate their actions and symptoms from other causes, and take measures to facilitate communication that is accessible to the individual in question.

Some persons who are deaf or hard of hearing also experience inner ear impairments that can affect their balance and their speech may be slurred or otherwise difficult to understand.

IV. DEFINITIONS:

- A. **Auxiliary Aids and Services:** Communication aids that assist people who are deaf or hard of hearing. 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 teletypewriters (TTYs); telephone handset amplifiers; the use of telecommunications relay services; assistive listening systems; videotext displays; and hearing dogs.
- B. **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 of what is being said.
- C. **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. An interpreter shall be deemed qualified or intermediary as determined by the Massachusetts Commission for the Deaf and Hard of Hearing.²
- D. **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, although some deaf persons use other forms of sign language, such as Manually Signed English (MSE) or Signed Exact English (SEE). Signs convey concepts or ideas, even though a sign may stand for a separate English word. Signing individual letters by finger spelling can

² M.G.L. c. 221, § 92A

supplement sign language. Just as there are regional variations (dialects) in spoken English, there are regional differences in sign language.

- E. Communication Access Realtime Translation (CART):** also called live captioning or real-time stenography, or simply real-time captioning, is the general name of the system that court reporters, closed captioners, and others use to convert speech to text. A trained CART provider uses keyboard or stenography methods to transcribe spoken speech into written text. In providing translation for deaf, late deafened and hard of hearing people, CART professionals have additional training, experience and other qualifications for added expertise (speed and accuracy and cultural competence) as compared to court reporters and other stenographers. Remote CART is done via the internet with the trained provider at a remote location. Some people use CART as acronym for “Computer Assisted Realtime Transcription”. The services provided are identical.

V. COMMUNICATING w/ PEOPLE WHO ARE DEAF OR HARD OF HEARING, OR WHO HAVE SPEECH IMPAIRMENTS:

- A. Emergency Call Takers and Dispatchers:** It is the responsibility of the ECC staff to accomplish the following whenever it is determined that a person is deaf, hard of hearing, or has a speech impairment:
1. The ECC is equipped to receive E9-1-1 calls from TTY and computer modem users. All certified E-9-1-1 call takers are trained to communicate with callers using the system’s TTY equipment.
 2. Upon receiving an E-9-1-1 TTY call-takers shall communicate using TTY communications procedures.
 3. Dispatchers shall place a high priority on response to emergency calls for service from persons who are deaf or hard of hearing, or who have speech impairments.
 4. Persons who are deaf or hard of hearing, or who have speech impairments shall be provided with direct, equal access to all emergency services provided by this department.
- B. Communicating with the Deaf or Hard of Hearing:** In terms of understanding some of the unique ways in which people who are deaf or hard of hearing communicate, officers should keep the following things in mind whenever encountering such an individual:
1. **Encountering Deaf or Hard of Hearing Persons:** Such persons may attempt to gain the attention of an employee by touching the officer when the officer is not facing them. This is how a deaf or hard of hearing person commonly gains the attention of others, so that he/she can see the other person’s face and attempt to communicate. Employees should not interpret this touching as offensive or possibly threatening behavior.

2. *Communicating in General:* Employees should never assume that a person understands verbal communications until it can be confirmed by appropriate responses to questions or directives. Once someone is identified as a deaf or hard of hearing person, employees shall 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). 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 hard of hearing. Such indications may include, but are not limited to the following:
 - a. The appearance of bumper stickers, rear window decals, or visor notices/symbols indicating the disability;
 - b. Failure of persons to respond to spoken commands or signals;
 - c. Use of signs, hand signals, or gestures in an attempt to communicate;
 - d. Display of cards by the person noting his or her hearing disability;
 - e. Inability or difficulty of a person to follow verbal instruction or requests for information;
 - f. Responses that do not fit the question asked, due to misunderstanding the question;
 - g. Evidence of a speech impairment;
 - h. A need to see the officer's face directly, suggesting that the person is attempting to lip-read;
 - i. The presence of a service animal, particularly if the dog is wearing a vest or tag identifying the animal as a hearing dog;
 - j. Evidence of assistive devices such as hearing aids, cochlear implants, or picture symbols; and
 - k. Evidence of behaviors such as increased agitation or irritability, low frustration levels, withdrawal, poor attention, or impaired equilibrium.
3. *Lip Reading:* Some persons who are deaf or hard of hearing are able to read lips and gestures to augment their ability to communicate. Persons who lip-read are visually oriented. Their interacting with and understanding of another person are determined primarily by their ability to see the officer. When an officer suspects that a person is able to communicate through lip-reading, the officer should observe the following guidelines:
 - a. Select a location that minimizes interference and distractions and has ample lighting;
 - b. Face the person so that eyes and mouth are clearly visible;
 - c. Orient themselves in such a way that there are no bright lights behind them;

- d. Stand about three to six feet from the person;
 - e. Avoid excessive body movement;
 - f. Speak only after getting the person's full attention;
 - g. Make questions and instructions short and simple;
 - h. Speak clearly and slightly slower than usual;
 - i. Be aware that facial hair makes lip reading more difficult; and
 - j. Be prepared to repeat oneself using different words to rephrase any question.
4. *Sign Language:* When an officer encounters a situation when there may be a companion or third party who can communicate with the person who is deaf or hard of hearing through sign language, the officer should adhere to the following guidelines:
- 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 shall not rely on family members or friends for sign language interpretation, due to their potential emotional involvement, conflict of interest, and legal requirements.³
 - c. Officers shall address all questions and directives to persons who lip-read by facing them directly and speaking in a moderately-paced conversational tone.
 - 1) Shouting or using exaggerated mouth movements interferes with the ability to lip-read.
 - 2) Understanding can be further degraded by the presence of facial hair, chewing gum, cigarettes, and so on.
5. *Hearing Aids and Cochlear Implants:* Officers should not assume that persons who wear hearing aids or cochlear implants are able to hear and fully understand what is being said. Officers can test comprehension by seeking appropriate responses to simple questions or directives. When doing so, the officers should keep the following factors in mind:
- a. Some people use hearing aids or cochlear implants to provide sound awareness rather than to increase speech understanding.
 - b. Highly stressful situations, background noise, multiple speakers, and complex information and instructions can compromise the limited effectiveness of hearing aids and cochlear implants.
 - c. Hearing aids and cochlear implants use batteries that have to be replaced as frequently as every 8-12 hours. People who use these devices typically

³ M.G.L. c. 221, § 92A

keep batteries with them at all times and may need to retrieve them from their pocket, bag, etc. in the event of a battery failure.

VI. INTERPRETER/CART REQUIREMENTS:

A. Statutory Requirements: General Law Ch. 221 §92A requires police to procure and pay for the services of a certified interpreter or CART reporter for a deaf or hard of hearing person whenever such person is arrested for an allegation of criminal law, including a local ordinance.

1. The Shift Commander is responsible ensuring that the statutory requirements are carried out while the individual is in police custody.
2. 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 certified interpreter or CART services.
3. 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.

B. Communicating without an Interpreter or CART Services: The legal requirement for the use of a sign language interpreter or CART services is generally governed by the length, importance, and complexity of the communication.

1. 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.
2. During questioning or interrogation, a sign language interpreter or CART services is almost always required.⁴

VII. ARREST SITUATIONS:

A. Arrest: Deaf and hard of hearing persons may be arrested in situations where an officer has the right to make an arrest. See the department *Policy #440 – Arrest Guidelines*.

⁴ *Comm. 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.

1. A sign language interpreter or CART services 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.⁵
2. If probable cause to make an arrest must be established through questioning or interrogation of a deaf or hard of hearing person, a sign language interpreter or CART services is almost always required.⁶

B. Use of Written Communications: Some deaf and hard of hearing persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions. Therefore, officers shall not assume the effectiveness of this form of communication and should gain confirmation of a person's understanding whenever possible.

1. All essential communication with the suspect should be completed prior to the application of handcuffs, if possible.
2. 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.

C. Field Sobriety Testing: Some deaf or hard of hearing persons have reduced verbal communication skills, speech that may be incoherent or otherwise resemble intoxication, or may have difficulty with equilibrium.

1. Officers should be aware when administering the standardized field sobriety tests to such persons.
 - a. Avoid using balance tests when equilibrium is an issue.
 - b. Factor in speech impediments when evaluating a suspect's speech.
 - c. Use the horizontal gaze Nystagmus test, if appropriately trained.
 - d. Breathalyzer and/or blood alcohol measurements (PBTs) should be employed as alternative tests when available.
2. Officers must avoid any evidentiary questions during field sobriety testing; as such questions require an interpreter or CART services.⁷

D. Booking: When booking a deaf or hard of hearing person, officers may communicate with the person being booked through:

1. Written communications, however, keep in mind that some deaf and hard of hearing persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions;
2. Verbal communications (if possible);

⁵ M.G.L. c. 221, § 92A

⁶ M.G.L. c. 221, § 92A

⁷ M.G.L. c.221, § 92A

3. A companion of the suspect acting as an interpreter;
 4. A non-certified interpreter; or
 5. A certified interpreter or CART services.
- E. Rights:** An officer must advise a deaf or hard of hearing person of his or her rights through a certified interpreter or CART services in order for a waiver of such rights to be valid.⁸
- F. Questioning:** Officers must be aware that any statements made by a deaf or hard of hearing person that are elicited without the use of a certified interpreter or CART services may not be admissible as evidence against the defendant. Refer to **Statutory Requirements, Section IV (A)** in this policy.⁹

⁸ *Comm. v. Kelley*, 404 Mass. 459, 535 N.E.2d 1251 (1989)

⁹ M.G.L. c. 221, § 92A