

Interacting with Persons Who are Deaf or Hard of Hearing (D/HH): Questions and Answers for Law Enforcement

There are close to one million New Jersey residents with varying degrees of hearing loss ranging from mild to profound. As a member of law enforcement, you are likely to come into contact with persons who are Deaf or Hard of Hearing (D/HH), or who have another disability that impacts the way in which they communicate, while performing your job duties. They may be a victim, witness, suspect, or an arrestee. Ensuring effective communication between law enforcement officers and people who are D/HH is important both to law enforcement and to the D/HH community. The same is true of communications between law enforcement officers and individuals with disabilities more generally.

The twelve guidelines below are intended to equip you with the information you need to:

- (1) identify when an individual may be D/HH or have another disability that impacts communication; and
- (2) ensure that you give such individuals the opportunity to communicate effectively, be understood, and access the same range of services law enforcement makes available to the state's hearing and non-disabled population.

1. Expect to encounter D/HH individuals in routine interactions, and be prepared to facilitate effective communication in any interaction with victims, suspects, or any other member of the public.

Unfortunately, there are some common misperceptions about the D/HH community. For example, many individuals mistakenly believe that individuals who are D/HH cannot drive or cannot work – but many individuals who are D/HH do both. Law enforcement should therefore keep in mind that they may encounter someone who is D/HH in any routine interaction, including traffic stops.

The Attorney General's Use of Force Policy (Dec. 2020) includes specific guidance for officers encountering individuals who have or may have a disability. Specifically, see sections 1.3 and 2.6 to 2.9. As stated in the Use of Force Policy, officers must respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

2. When someone is not immediately responsive to verbal commands, consider whether they may be deaf, hard of hearing, or have another disability that impacts their communication, instead of assuming disrespect or lack of cooperation.

Indicators that an individual may be D/HH may include:

- use of signing;
- use of expressive body language;
- pointing to one's ear and shaking one's head;
- reaching for a pad and pencil; or
- visible hearing aids or cochlear implants.

Not all individuals who are D/HH will display these signs, however, so law enforcement officers should be mindful that an individual who is not immediately responsive may be D/HH or have another disability that impacts communication.

Officers should be aware that individuals who are D/HH may fear that:

- routine traffic stops could escalate due to misunderstandings or lack of effective communication; or
- that law enforcement officers will mistake them as being
 - under the influence of alcohol or drugs;
 - uncooperative or disrespectful; or
 - threatening due to their possible use of very expressive body language.

These fears are further compounded for individuals from Black and brown communities, immigrant communities, or LGBTQ+ communities who fear that their intersecting identities place them at greater risk in such encounters with law enforcement. And these fears may also be further compounded for individuals who, in addition to being D/HH also have other disabilities, like autism or mental health disabilities, that impact the way in which they communicate. It is therefore critical, both for the D/HH community and New Jersey at large, that law enforcement officers are equipped to recognize indicators that an individual may have a disability that is impacting their communication or interactions so that they can facilitate effective communication rather than mistaking behaviors related to a disability as behaviors that present a threat or indicate a refusal to cooperate.

3. The law requires law enforcement officers and agencies to take steps to communicate effectively with people who are deaf or hard of hearing, and with people who have other disabilities that impact communication.

Effective communication with a person who is D/HH helps law enforcement officers carry out their duties and facilitates compliance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. (LAD); state laws providing for interpreter for D/HH individuals in official proceedings, N.J.S.A. 34:1-69.7 et seq.; the Americans with Disabilities Act (ADA) (42 USC 12131 – 12134); and other laws and policies.

Under the LAD, it is unlawful for places of public accommodation – which includes police departments and individual police officers – to discriminate on the basis of disability. Police departments are required to make reasonable accommodations to their policies and procedures in order to allow individuals with disabilities to participate equally in and access the full benefits of the department's services, programs, or activities. That means police departments must make reasonable accommodations to ensure that communications with individuals with disabilities are effective.

The requirement to provide reasonable accommodations to facilitate effective communication applies not only to suspects, victims, and witnesses who are D/HH, but also to D/HH family members who would otherwise be communicating with officers or staff (for example, a deaf parent of a minor who is a victim, witness, or suspect).

And the requirement to provide reasonable accommodations to facilitate effective communication applies not only to communications between D/HH people and law enforcement, but also to D/HH individuals' ability to communicate with others while in law enforcement's custody. For example, in situations where a nondisabled individual would be permitted to make a telephone call, law enforcement must allow and provide D/HH

individuals equal access to adapted equipment to make telephone calls, unless doing so would impose an undue burden on their operations or create an unsafe situation.

The LAD is enforced by the New Jersey Division on Civil Rights (DCR). Additional information about the LAD can be found on DCR's website, www.NJCivilRights.gov.

4. What constitutes “effective communication” depends on the situation, the D/HH person’s abilities, and their usual or preferred method of communication.

What qualifies as a reasonable accommodation to ensure effective communication with someone who is D/HH depends on several factors, including:

- the D/HH individual’s abilities and usual or preferred method of communication;
- the nature, importance, complexity, and duration of the communication at issue; and
- whether the situation is an emergency.

Thus, providing a reasonable accommodation to facilitate effective communication may require providing an impartial certified sign language interpreter to someone who is fluent in sign language, or providing other auxiliary aids like realtime captioning, videophone or relay services for telephonic communications to someone who is not fluent in sign language or who does not prefer to communicate using sign language.

5. Not all D/HH individuals can read lips, read or write English, or use American Sign Language (ASL), so what constitutes “effective communication” for one member of the D/HH community may not constitute “effective communication” for another.

Many people mistakenly believe that all people with hearing loss know how to read lips or use sign language fluently – but neither is true. Not all individuals who are D/HH read lips, and even those that do may not do so well enough to navigate an encounter with law enforcement. Only 30% of the English language is clearly visible on the lips, which can make lipreading extremely stressful. That can be compounded by the stress a D/HH individual may feel while interacting with an unfamiliar law enforcement officer, and lipreading can be particularly difficult in the dark at night. Additionally, during the COVID-19 pandemic, officers should be particularly sensitive to the challenges that mask-wearing presents to communication with members of the D/HH community. For example, clear masks can be worn so that it is easier for D/HH individuals to read an officer’s lips.

Similarly, not all people who are D/HH know American Sign Language fluently. And not all individuals who are D/HH can read English. Thus, what constitutes “effective communication” for one member of the D/HH community may not constitute “effective communication” for another.

6. A certified sign language interpreter will likely be necessary to ensure effective communication in lengthy or complex communications with a D/HH person who uses sign language as their usual and preferred method of communication.

Situations that require lengthy and complex communications with a person who uses sign language will generally require the use of a certified sign language interpreter and, perhaps, a certified deaf interpreter. These situations include:

- Communicating with members of the public who come to the station to report a crime;
- Asking for consent to search a person, vehicle, or premises;
- Reading a Miranda warning to a suspect;
- Interrogating, interviewing, or taking statements from a suspect or witness; and
- Communicating with D/HH parents or guardians of any minor (whether the minor is D/HH or hearing) who is a witness, suspect, or victim.

Where an interpreter is required, a D/HH individual may not be able to sign while handcuffed. Under the LAD, law enforcement must make reasonable accommodations to their policies and procedures, including policies and procedures about when a suspect should be handcuffed, unless the reasonable accommodation would pose an undue burden on their operations. Safety is one factor that law enforcement may consider in determining whether a reasonable accommodation poses an undue burden on their operations. Thus, law enforcement procedures should outline under what circumstances modification to handcuffing procedures could be made to enable an arrestee who is D/HH to sign.

7. Other steps will be necessary to ensure effective communication during any lengthy or complex communications with a D/HH person who does not use sign language.

Generally, law enforcement officers must ensure that they can communicate effectively with a D/HH person. Whether the communication is “effective” is viewed from the perspective of the D/HH individual. Law enforcement must give primary consideration to the aid or service requested by the D/HH individual. The officer must communicate in a way that the D/HH individual can understand.

Various types of communication aids are available to communicate with D/HH individuals who do not use sign language. The type of aid required for effective communication will depend on the D/HH individual’s usual and preferred method of communication, and law enforcement officers should ask what those are, as it may not be obvious.

Reasonable communication accommodations for deaf individuals may be different than those for persons who are hard of hearing. Below are examples of accommodations that may be requested by D/HH individuals who do not use sign language:

- Assistive Listening Devices, e.g. Hearing Loop Systems, FM Systems, Infrared Systems, Personal Sound Amplifiers
- Communication Access Real-Time Transcription (CART) services – a service in which a transcriber types what is said into a computer that displays the typed words on a screen
- Typed notes, texts, or other electronic communications such as speech-to-text apps or text-only apps

The following may be used to communicate with a D/HH individual when law enforcement needs to make contact via the telephone (ex: follow-up phone calls for additional information) or through the internet:

- Video relay services (such as NJ Relay, <http://njrelay.com/>)
- TTYs, amplified phones, videophones
- Captioned telephones

8. If a sign language interpreter or other auxiliary aid is required by law to allow a D/HH person to communicate effectively, it must be provided by the law enforcement agency at no cost to the D/HH individual.

Individuals who are D/HH are not required to bring or provide their own interpreters when interacting with law enforcement, and if the D/HH individual indicates that a sign language interpreter is necessary for effective communication, law enforcement may not rely upon family members or friends of the D/HH individual to act as sign language interpreters. Family members and friends may not be qualified to act as an interpreter, nor can law enforcement be sure that these individuals will provide literal, unbiased interpretation.

If an individual who is D/HH insists that a family member or friend can assist with effective communication for lengthy or complex interactions not governed by N.J.S.A. 24:1-69.10, law enforcement may choose to rely on the family member or friend designated by the D/HH person. However, law enforcement officers may want to obtain the services of a qualified sign language interpreter to ensure impartial translation, particularly for matters involving informed consent, Miranda warnings, or interrogation.

Where an interpreter or other accommodation is required, it must be provided at no cost to the D/HH individual. The interpreter must also be able to interpret effectively, accurately, and impartially. Some D/HH individuals, depending on their backgrounds, may need to use a Certified Deaf Interpreter.

9. If you are not sure whether an interaction is lengthy or complex enough to require a reasonable accommodation, absent an emergency, the best practice is to err on the side of making the reasonable accommodation to ensure effective communication.

Generally, interpreter services are not required for simple interactions – such as checking a license, issuing a traffic citation, giving directions to a location, or responding to a simple inquiry from an individual who enters a police station to ask a question. For example, a D/HH individual does not have the right to an interpreter during every routine traffic stop. N.J.S.A. 34:1-69.10. In some circumstances, written notes or simply pointing to the relevant information on the citation are enough to tell the individual how fast the individual was driving or what the individual did wrong (failed to signal, failed to stop at a stop sign, etc.). If, however, a D/HH person is suspected of wrongdoing that exceeds a routine traffic violation, an interpreter's services or other reasonable accommodation will likely become necessary prior to any questioning or interrogation.

For simple interactions, law enforcement should also be aware of speech-to-text and text-only apps available on smartphones and tablets that can assist with simple communications. Examples of speech-to-text apps include: Ava, Live Transcribe, Microsoft Translator, and Otter.ai. Examples of text-only apps include: Ava, Big Note, Cardzilla, and Google Keep.

These apps are not a substitute for an interpreter or other reasonable accommodation for lengthy or complex interactions. In addition, when considering whether to use these apps, officers should keep in mind that not all D/HH individuals are capable of reading English. And officers should also check with their agencies to ensure that use of such apps is permitted prior to using or installing them.

If the officer has probable cause to make a felony arrest without an interrogation, even when the alleged perpetrator is known to be D/HH, there is no need for an interpreter to effectuate the arrest. However, an interpreter should be sought as soon as practicable thereafter for the Miranda Warning and subsequent interrogation or taking of a statement.

A D/HH individual who has been arrested and who is otherwise eligible for release shall not be held in custody pending the arrival of an interpreter.

10. To facilitate their officers' compliance with the LAD, law enforcement agencies should keep a local listing of interpreters their officers can call when an interpreter is needed.

The NJ Division of the Deaf and Hard of Hearing (DDHH) maintains a list of certified sign language interpreters. Law enforcement agencies can contact DDHH at 609-588-2648 for assistance with coordinating interpreting services. Generally, the following information is necessary for assisting with a request for interpreter services:

- The date and time the interpreter is needed
- The nature of the matter
- Approximate duration of time the services will be needed
- Location and directions to the assignment
- Billing information
- Number of people involved

Each interpreting situation is unique and will depend on a number of factors including: whether the individual uses “home signs” requiring more specialized services, whether the individual also has vision needs necessitating the use of close-vision or tactile interpreters, and other factors.

For after-hours, weekends, or emergencies, law enforcement can contact interpreters directly on the list provided by DDHH available online at: <https://nj.gov/humanservices/ddhh/assets/documents/2020%20Legal%20List.pdf>

From this list, law enforcement agencies can maintain a local listing of interpreters that may be available for emergency situations.

Law enforcement agencies may also want to make arrangements with a Video Remote Interpreting (VRI) service for those times when an agency is unable to obtain a live interpreter.

11. As a best practice, law enforcement officers should avoid the following when using an interpreter to communicate with D/HH individuals:

- Asking the interpreter for personal information about the D/HH person that is not being directly translated from the D/HH person by the interpreter.
- Leaving the interpreter alone with the D/HH person
- Asking the interpreter to perform a service that would normally be done by a law enforcement professional (e.g. filling out a bail request form)
- Using “tell him, ask her” in communications. It is appropriate to look at and speak directly to the D/HH individual.

12. Law enforcement officers can also use the following best practices to help ensure effective communication with the D/HH community:

- Law enforcement officers can learn basic signs to use during traffic stops such as: registration, license, stop, wait, slow, help, speeding, ticket, and seat belt.
- Law enforcement officers can face D/HH individuals while speaking, speak slowly and clearly, incorporate appropriate gestures and facial expressions, and use visual aids when possible (such as gestures and pointing to relevant information).
- Law enforcement officers can avoid covering their mouth or chewing gum when talking to a D/HH individual.
- Law enforcement officers should not assume a D/HH individual can hear them clearly just because they are wearing a hearing aid or cochlear implant.
- Law enforcement officers should refrain from shining a flashlight in a D/HH individual's face when feasible, as this inhibits communication for those relying on facial expressions as visual cues.
- During the COVID-19 pandemic, officers should be particularly sensitive to the challenges that mask-wearing presents to communication with members of the D/HH community. For example, clear masks can be worn so that it is easier for D/HH individuals to read an officer's lips.