

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



202.747.1904 direct
ddouglass@sheppardmullin.com

May 23, 2017

File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the revised Chapter 55.5.1 – Communications with Persons Who are Deaf or Hearing Impaired. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 55.5.1 – Communications with Persons Who are Deaf or Hearing Impaired, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 55.5.1

TITLE: COMMUNICATIONS WITH PERSONS WHO ARE DEAF OR HEARING IMPAIRED

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this Chapter is to provide guidelines for interactions with persons who are deaf, hearing impaired, or have a hearing impairment and may encounter difficulties in gaining meaningful access to, or an understanding of, important rights, obligations and services.

POLICY STATEMENT

1. Members shall respect and treat all individuals equally regardless of their ability to hear. Individuals who are deaf or hearing impaired are entitled to a level of service equivalent to that provided to other persons.
2. Effective communication with persons who are deaf/hearing impaired and involved in an incident requiring a police response—whether as a victim, witness, suspect, or arrestee—is essential to ascertain the type of incident, the level of urgency, and relevant facts.
3. The New Orleans Police Department has specific legal obligations under the Americans with Disabilities Act to communicate effectively with people who are deaf or hearing impaired. To carry out these obligations, members shall adhere to the guidelines of this Chapter.
4. The NOPD will ensure that appropriate auxiliary aids, including qualified interpreters, are made available to all members of the public who are deaf or hearing impaired so that they may participate in or benefit from NOPD's law enforcement and related services, programs, or activities on an equal basis with others.

DEFINITIONS:

Definitions relevant to this Chapter include:

Auxiliary aids—Services or devices that enable persons who are deaf/hearing impaired to have an equal opportunity to understand and/or communicate effectively. These include, but are not limited to, the use of gestures or visual aids to supplement oral communication; the use of a notepad and pen or pencil to exchange written notes; the use of a computer or typewriter; the use of an assistive listening device or system; the use of a video phone or video remote

interpreting service; or the use of a qualified interpreter.

Exigent circumstances—A compelling urgency or true emergency that an officer can specifically describe not using vague terms or boilerplate language. Circumstances that cause a reasonable person to believe that prompt action is necessary to prevent injury to themselves or others.

Intermediary interpreter/transliterater--A person, including one who is hearing impaired, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a person who is hearing impaired and a qualified interpreter/transliterater.

Qualified interpreter/transliterater—A qualified sign language or oral interpreter is one who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Accordingly, an interpreter must be able to sign to the deaf individual (or interpret orally to the person who does not use sign language) what is being said by the hearing person and to voice to the hearing person what is being signed or said by the individual who is deaf. The interpreter must be able to interpret in the language the individual who is deaf uses (e.g., American Sign Language or Signed English) and must be familiar with law enforcement terms and phrases. Although a “qualified” interpreter may be certified, a certified interpreter is not necessarily “qualified.” A person certified by the Registry of Interpreters for the Deaf or, in the event a certified interpreter/transliterater is not available, a person able to accurately communicate with and convey information to and from a person who is hearing impaired (see <http://www.lrid.org/#> for additional information).

Person who is deaf—A person who has a profound hearing loss and who may use sign language.

Person who is hearing impaired—A person who, because of an impairment, has a diminished or damaged sense of hearing and who may have difficulty understanding certain communications.

Transliterater—A person who can transcribe or represent letters or words in the corresponding characters of another alphabet.

TTY (Text Telephone /Teletype Terminal /Teletypewriter)—A telecommunications device for persons who are deaf or hearing impaired that allows them to use the telephone to communicate through typed text messages. A TTY is required at both ends of the conversation. It can be used with both land lines and cellular phones. Unlike text messaging, it is designed for synchronous conversation, like a text version of a phone call.

Video phone—A device that assists persons who are deaf/hearing impaired who use sign language to communicate with each other or with hearing persons through a sign language interpreter.

Video remote interpreting service—A service that provides communication between persons who are deaf/hearing impaired and hearing persons that are in the same location, using an interpreter through a computer with a webcam and Internet connection.

PERSONS WHO ARE DEAF/HEARING IMPAIRED-GENERAL PROVISIONS

5. Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should be alert to the potential for miscommunication with persons who are deaf or hearing impaired. Members should exercise special care in

the use of all gestures and verbal and written communication to minimize initial confusion or misunderstanding when dealing with any person who has a known or suspected communication impairment.

6. The type of auxiliary aid that may be required for effective communication with a person who is deaf/hearing impaired will depend on the length, complexity and context of the communication. Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this Department shall consider all information reasonably available to them when determining how to communicate with a person who is deaf or hearing impaired. These factors may include, but are not limited to:
 - (a) The extent to which a hearing impairment is obvious or otherwise made known to the involved member. People who are deaf or hearing impaired may be reluctant to acknowledge an impairment and may even feign a complete understanding of a communication, despite actual confusion;
 - (b) The nature of the impairment (e.g., total deafness or hearing impaired);
 - (c) The person's usual method of communication;
 - (d) The nature of the contact (emergency vs. non-emergency, custodial v. consensual);
 - (e) The nature, importance, and duration of the communication required; and
 - (f) The availability of auxiliary aids.
7. To communicate with all persons effectively, as soon as practicable in the interaction, Members will give primary consideration to the type of auxiliary aid or service requested by the individual who is deaf or hearing impaired. Members may use the communication card(s) in **Appendix A** to ascertain an individual's preferred method of communication and provide that aid when it is appropriate under the circumstances.
8. NOPD shall not charge persons who are deaf or hearing impaired for the cost of an auxiliary aid needed for effective communication.
9. Members shall not require a person who is deaf/hearing impaired to supply his or her own auxiliary aid.

PROVIDING ASSISTANCE THROUGH AUXILIARY AIDS

10. In many situations, oral communication supplemented by gestures and visual aids or an exchange of written notes will be an effective means of communicating with people who are deaf/hearing impaired. In other situations, a device or interpreter may be necessary. The more lengthy, complex, and important the communication, the more likely it is that an interpreter will be required. For example:
 - (a) If a person who is deaf/hearing impaired is asking for directions to a location, gestures or an exchange of handwritten notes may be an effective means of conveying this information communication.
 - (b) If a member is conducting witness interviews as a result of a criminal incident, a sign language interpreter may be required to communicate effectively with someone whose primary means of communication is sign language. An oral interpreter may be necessary to communicate with someone who can read lips.
11. Officers should document the type of communication utilized in any related report and whether a person who is deaf/hearing impaired elected to use services provided by the Department or some other identified source. Department-provided services may include, but are not limited to, the following auxiliary aids:
 - (a) FIELD RESOURCES

Individual officers and members are encouraged to utilize resources immediately available to them in any contact with a person who is deaf/hearing impaired. Examples of this would include such simple methods as:

- i. Hand gestures or written communications exchanged between the member and a person who is deaf/hearing impaired;
- ii. Using visual aids, such as the communication card(s) in the attached appendix;
- iii. Facing an individual who uses lip reading and speaking slowly and clearly; and
- iv. Slowly and clearly speaking or reading simple terms.

(b) INTERPRETIVE SERVICES

The Executive Director of the Orleans Parish Communications District will maintain a list of qualified interpreters and services to be contacted at Department expense with the approval of an NOPD supervisor, to assist persons who are deaf/hearing impaired, which approval will be granted unless it poses an undue burden on NOPD. When utilized, notification to such interpreters shall be made at the earliest reasonable opportunity. Members shall not unreasonably prolong any detention of a deaf/hearing impaired person if an interpreter is not available to respond within a reasonable time. The Deaf Action Center has a list of individuals who are trained and will respond to callouts if needed. For emergency interpreting assistance, officers should call the Deaf Action Center at (504) 615-4944 or (318) 425-7781, once they have received supervisory approval.

(c) TTY AND RELAY SERVICES

Individuals who are deaf/hearing impaired must be given the opportunity to use text telephones (TTY or TDD), telecommunications relay services (TRS) or video relay services (VRS). All calls placed by such individuals through such services are accepted by the Orleans Parish Communications District, which is responsible for the 911 system for Orleans Parish. Once officers have responded to a call for service relayed through 911 and determined that an interpreter for an individual who is deaf/hearing impaired may be needed, they shall immediately contact his/her supervisor. Once the supervisor has approved the use of the Deaf Action Center services, its main number (504-615-4944) will be contacted and the Deaf Action Center will attempt to contact the nearest available interpreter to assist.

(d) OTHER DEVICES AND SERVICES

Members may also make use of other available, Department-authorized devices and services, such as assistive listening devices, video phones, or video remote interpretive services. Use of these other devices and services also requires NOPD supervisory approval.

12. The Department discourages the use of volunteer interpreters to assist communications with people who are deaf/hearing impaired. Volunteers, such as family members or friends of people who are deaf/hearing impaired, may be used to assist communications **only** under exigent circumstances when other auxiliary aids are unavailable or ineffective. The involved Members must consider the nature of the contact and relationship between the volunteer and the person who is deaf/hearing impaired and be mindful of the potential for conflicts of interest, particularly in domestic violence situations.

CUSTODIAL INTERROGATIONS, ARRESTS AND BOOKING

13. To ensure that the rights of all persons who are deaf/hearing impaired are protected during arrest and custodial interrogation, the Department shall provide necessary communication assistance during such situations. Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in any related criminal prosecution. As such, personnel providing communication assistance in these situations must use auxiliary aids to accurately and effectively communicate with persons who are deaf/hearing impaired.
14. Whenever a person who is deaf/hearing impaired is arrested, the arresting officers shall procure a qualified interpreter/transliterater for any interrogation, warning, and notification of rights or taking of a statement (*see* La. R.S. 46:2364 (E); La. R.S). 46:2366. The use of an interpreter/transliterater shall be noted in all written reports that document the interrogation.
15. Individuals who require communication aids (e.g., hearing aids) shall be permitted to retain such devices while in custody.
16. Whenever a person who is deaf/hearing impaired is detained or arrested and placed in handcuffs, officers should consider, safety permitting, placing the handcuffs in front of the body to allow the individual to sign or write notes (*see* **Chapter 1.3.1.1 – Handcuffing and Restraint Devices**).

COMMUNITY OUTREACH

17. Community outreach programs and other such services offered by this Department have become increasingly recognized as important to the ultimate success of more traditional law enforcement duties. As such, this Department will continue to work with community groups, local businesses, and neighborhoods to provide equal access to such programs and services to individuals and groups with disabilities.

TRAINING

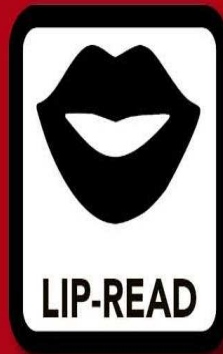
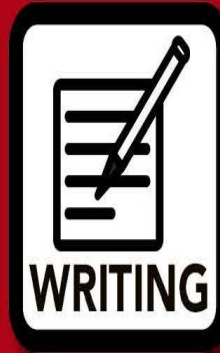
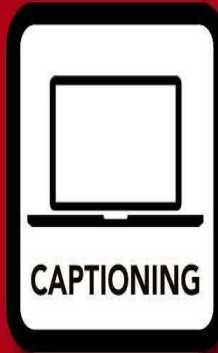
18. To ensure that all members who have contact with the public or with those in custody are properly trained, this Department will provide periodic training on:
 - (a) The Department's obligation to provide services under the Americans with Disability Act, and any recent or relevant case law;
 - (b) Member awareness of related policies, procedures, forms, and available resources;
 - (c) Working effectively with in-person and telephone interpreters and related equipment; and
 - (d) Awareness and understanding of the importance of this Chapter to ensure its implementation.

APPENDIX A: COMMUNICATIONS CARDS

Members may use the following pages as visual aids to assist communication with persons who are deaf or hearing impaired.



The best way to communicate with me is:



VIOLATIONS

