



# Rochester Police Department General Order



EFFECTIVE DATE: <b>April 20, 2015</b>	SUBJECT: <b>AMERICANS WITH DISABILITIES ACT (ADA)</b>	ORDER# <b>517</b>
RESCINDS:  G.O. 517 (08/22/13)	REFERENCE STANDARD (S):  NYS:	PAGE  1 of 10
ATTACHMENT (S):		
Chief's Signature: <i>Michael L. Ciminelli</i>		

## I. DEFINITIONS

- A. Disability - A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such impairment.
- B. Guide Dog, Hearing Dog, Service Dog - A dog which is properly harnessed and has been or is being trained by a qualified person, to aid and guide a person with a disability. (New York State Civil Rights Law § 47-b (4) definition).
- C. Public Facilities - Public Facilities include, but shall not be limited to, all modes of public and private transportation, all forms of public and private housing accommodations whether permanent or temporary, buildings to which the public is invited or permitted, all educational facilities and institutions, all places where food is offered for sale, all theatres, including live playhouses and motion picture establishments and all other places of public accommodations, convenience, resort, entertainment, or business to which the general public or any classification of persons therefrom is normally or customarily invited or permitted.
- D. Service Animals - Dogs that are individually trained to do work or perform tasks for people with disabilities. (Americans with Disabilities Act definition)

NOTE: The miniature horse is not included in the definition of service animal, however, the Department of Justice has added a specific provision under Title 28 § 35.136(i) of the Code of Federal Regulations. Under this provision, a public entity must make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a

disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility.

1. Whether the miniature horse is housebroken.
2. Whether the miniature horse is under the owner's control.
3. Whether the facility can accommodate the miniature horse's type, size, and weight.
4. Whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

## **II. POLICY**

- A. It is the policy of the Rochester Police Department (RPD) to ensure that a consistently high level of police service is provided to all members of the community, including persons with disabilities. This level of service will involve first responder recognition of the nature and characteristics of various disabilities, and appropriate physical and emotional support to people with disabilities who seek to access police services or who come into contact with the police. Such services include, but are not limited to:
  1. Recognition of symptoms, and appropriate medical and emotional support for people experiencing seizures;
  2. Sensitivity to persons with impairments;
  3. Rapid access to interpreters for people with hearing and/or speech disabilities who have a need to communicate with police personnel;
  4. 24-hour access to professional support systems for people with mental disabilities;
  5. Access to police information, programs, and publications for people who have impaired vision or hearing;

6. Recognition of the difference between characteristics common to certain disabilities (such as epilepsy, diabetes, and deafness) and those associated with antisocial or criminal behavior or reaction to alcohol and drug abuse; and
  7. Other services to ensure access for persons with visual, mental, emotional, and medical disabilities, including "invisible" disabilities, such as diabetes, epilepsy, multiple sclerosis, loss of hearing, and others.
- B. It is the policy of the RPD to ensure effective communications with deaf or hard of hearing persons who are in need of police services that are short of duration and simple in content. Such communications may be furnished through the use of Department personnel who are capable of effectively communicating in sign language or other methods available (e.g., TTY or written materials) where effective. In situations where the legality of the conversation may be part of the basis for an enforcement or court action, or may be questioned in court, appropriate steps, including but not limited to, securing the services of a certified interpreter, must be taken to ensure that the communication is accurate.
- C. It is the policy of the RPD to ensure that persons with disabilities and their service animals are afforded access to all public facilities as required by the Americans with Disabilities Act (ADA), New York State Civil Rights Law Article 4-B Section 47, and the Code of Federal Regulations Title 28 § 35.136(i).
- D. It is not the intent of this policy to provide detailed information on all disabilities. However, it is incumbent upon the employees of this Department to be aware of the various disabilities within the community and to familiarize themselves with the manner in which to respond to the needs of persons with disabilities.

### **III. PROCEDURES**

#### **A. Visual Disabilities**

Proper identification of an RPD employee is imperative to a blind or visually impaired person. When an employee responds to a call for service from a visually impaired individual and that disability is known or recognized:

1. The Emergency Communications Department (ECD) may be instructed by the employee to call the complainant to advise them that the employee is on the scene and may identify the responding employee by name;
2. Employees need not raise their voices to communicate with the individual; and/or
3. Employees need not grab the individual's arm to lead him or her in a particular direction. The individual may need to take the employee's arm for guidance.

**B. Intellectual Disability**

1. Employees should recognize that people who have an intellectual disability have varied degrees of limited intellectual functioning. In all situations, employees should:
  - a) Ask short questions;
  - b) Be patient when waiting for a response;
  - c) Repeat questions and answers if necessary;
  - d) Have individuals repeat questions in their own words; and
  - e) Provide reassurance.
2. When dealing with someone who is lost or has run away, the employee may gain improved response by accompanying the person through a building or neighborhood to seek visual clues.
3. In responding to the needs of persons with a severe or profound intellectual disability, the employee should seek the aid of the individual's friends or family, or refer to other community agencies whose services are specifically directed at the needs of disabled individuals.

**C. Mobility Impairments**

1. Most visibly identifiable are those persons with mobility impairments. These disabilities include persons who have difficulty walking, use wheelchairs or other mobility aids, and those persons who are immobile.

2. In critical situations, employees should be aware of the most safe and expedient manner of assisting persons with mobility impairments without causing additional and unnecessary strain or injury.

**D. Invisible Disabilities**

1. Many disabilities, unless identified to the employee by the individual, are difficult to recognize. Consideration must be given to an individual who indicates to an employee he is experiencing distress related to an invisible disability. An individual prevented or detained from obtaining immediate treatment may experience a seizure or other reaction, at which time he may have reached a critical physical state.
2. Involuntary behavior associated with some invisible disabilities may resemble behavior characteristically exhibited by intoxicated, or less frequently, combative individuals. An inaccurate assessment may lead to unnecessary confrontation, injury, and denial of needed medication and/or medical treatment.
3. An employee's first obligation is to protect the individual from additional harm.

**E. Speech and Hearing Disabilities**

1. The City of Rochester has a very large population of individuals who are deaf or hard of hearing. Occasionally, an officer will interview or interrogate an individual who is deaf or hard of hearing.
  - a) Successful police contact with citizens is characterized by effective communication between the parties whether it is a suspect, victim, witness, or complainant with whom the officer is talking. As such, police officers encountering an individual who is deaf or hard of hearing should use appropriate auxiliary aids and services whenever necessary to ensure effective communication with the individual.
  - b) Police contact with citizens occurs most frequently during routine traffic stops. In situations involving drivers who are deaf and use sign language for communication, when possible, the officer should use

appropriate sign language to initiate the exchange with the driver and should explain in writing the necessity for a stop and citation if the driver is to be charged with a traffic violation. The officer may NOT ask a family member or friend of the driver to interpret.

NOTE: The driver may present a Deaf Driver Communication Visor Card which may be utilized to facilitate effective communication during a traffic stop.

- c) In situations where the legality of conversations between the police and an individual who is deaf or hard of hearing may be questioned in court proceedings, (e.g., when a Miranda warning is given) the police must take appropriate steps including, but not limited to, securing the services of a certified interpreter whenever necessary to ensure that the conversations are effective.
2. It is the policy of the RPD that it will furnish appropriate auxiliary aids and services whenever necessary to ensure effective communication with individuals who are deaf or hard of hearing.
  - a) Auxiliary aids and services include certified interpreters, written materials, note pads, and other effective methods of making aurally delivered materials available to individuals who are deaf or hard of hearing.
  - b) When an auxiliary aid or service is required to ensure effective communication, the RPD must provide an opportunity for individuals who are deaf or hard of hearing to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individuals. "*Primary consideration*" means that the RPD must honor the choice, unless it can show that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration in the nature of its service, program, or activity, or in undue financial and administrative burdens.

- c) The procedures below address only those situations where a police officer, after consulting with the individual who is deaf or hard of hearing determines that the services of a certified interpreter are necessary to ensure effective communication.
3. Arrest Upon Probable Cause Without An Interview
- In circumstances where an individual who is hearing would have been arrested on probable cause without an interview, then a suspect who is deaf or hard of hearing in the same situation usually does not need to be provided with a certified interpreter.
- However, a certified interpreter may be required if an officer is unable to convey to the arrestee the nature of the criminal charges by communicating on a note pad or by using another means of communication. The arrestee should be transported to a temporary detention room at the Public Safety Building where either the arresting officer or the transporting officer can convey the information through the interpreter when he or she arrives.
4. Interview Needed to Establish Probable Cause to Arrest
- If a police officer needs to interview a suspect who is deaf or hard of hearing to determine if there is probable cause to make an arrest, a certified interpreter **must** be provided.
5. Interrogating An Arrestee
- a) An officer seeking to interrogate an arrestee who is deaf or hard of hearing must obtain the services of a certified interpreter prior to any interrogation.
  - b) Members must secure the services of a certified interpreter in order to accurately provide Miranda warnings to a deaf or hard of hearing arrestee prior to any interrogation.

NOTE: Just as with a hearing suspect, a suspect who is deaf or hard of hearing may be questioned without being provided Miranda warnings in compelling circumstances when the need for answers to questions in a situation posing a threat to the public

outweighs the need for the *Miranda* Rule. Known as the "Public Safety Exception", this rule allows the police, when confronted by a volatile situation, to take immediate action to protect the public without jeopardizing the admissibility of incriminating statements. In such situations, the member's primary purpose must be to take necessary action to deal with a public danger—NOT to acquire incriminating evidence, and must be strictly limited to questions necessary to deal with that danger, e.g., locate a gun discarded by a suspect during a foot chase in a populated area. Once the member receives information needed to deal with the public safety issue, all further questioning must immediately cease until *Miranda* warnings are given by a certified interpreter, and a proper waiver has been received.

#### 6. Issuance of Appearance Ticket

In circumstances in which an individual who is not deaf or hard of hearing would be issued an appearance ticket without being questioned by the investigating officer, then a suspect who is deaf or hard of hearing in the same situation need not be provided with a certified interpreter. If an officer has stopped a suspect for committing a non-criminal infraction and the officer is unable to convey to the violator the nature of the non-criminal infraction by communicating on a note pad or by using another means of communication, then the officer should use his or her discretion as to whether to call a certified interpreter to the scene or whether to issue a warning rather than a citation.

#### 7. Interviewing a Victim or Critical Witness

If an officer is able to communicate effectively by writing questions on a note pad and having the victim or witness who is deaf or hard of hearing write his or her responses, then the officer may proceed with the interview using a note pad. However, if an investigating officer is unable to communicate effectively with a victim or critical witness by using a note pad or some other means of communication other than a certified interpreter, then the investigating officer must provide the victim or critical witness with a certified interpreter. If the investigating officer cannot wait

until a certified interpreter arrives because the officer has to respond to another priority call, the following procedures apply:

- a) If the investigation does not involve a serious offense, then: *[a]* the officer can have a certified interpreter dispatched to the victim's or critical witness' location and request the dispatcher recontact the officer when the interpreter arrives. If a certified interpreter is unable to respond or if the officer cannot return to the scene, the officer must document his or her investigation as completely as possible and file the appropriate report; or *[b]* the officer can ask the victim or critical witness to come voluntarily to the section office when a certified interpreter is available. At that time, the investigating officer can return to the section to complete the investigation. If a certified interpreter is unable to respond, the officer must document his or her investigation as completely as possible and file the appropriate report.
- b) If the investigation does involve a serious offense and if the victim or witness who is deaf or hard of hearing is critical to establishing probable cause for an arrest or for completing the investigation, then the investigating officer, before leaving the scene, must contact his or her supervisor and advise the supervisor of the case. The supervisor will determine if an investigator will be called in to wait for a certified interpreter. This investigating officer must then document his or her investigation as completely as possible and file the report.

#### 8. Obtaining Certified Interpreters

Officers will arrange for a certified interpreter through their supervisor. The supervisor will contact the ECD supervisor who will notify a certified interpreter via the Department's contracted sign language vendor. When contacting ECD for an interpreter, the supervisor should provide the incident type, the name of the individual to whom the services will be provided, and the location of the interview and contact information for the investigating officer. The Department's liaison to the deaf and hard of hearing community can be

contacted for questions as to the need for a certified interpreter.

**9. Reports/Evidence**

All identifying information on the interpreter must be included in the report, including the interpreter's name, the time the interpreter was called, his/her time of arrival and departure. All written questions and responses between and among police officers and persons with hearing impairments must be treated as evidence and handled accordingly.

**F. Service Animals**

1. Members will recognize that persons with disabilities and their service animals must have unrestricted access to all public facilities as required by the Americans with Disabilities Act (ADA), New York State Civil Rights Law Article 4-B Section 47, and the Federal Code of Regulations Title 28 § 35.136(i).
2. Members may be called upon to mediate or enforce violations of these laws per current training and directives (Refer to Training Bulletin C-08-13).
3. Members who are authorized to issue an appearance ticket for a violation of § 47-b (2) of the New York State Civil Rights Law will include the following documents in the case package.
  - a) Appearance Ticket, RPD 1302, returnable to Rochester City Court.
  - b) Accusatory Instrument, RPD 1271, citing § 47-b (2) New York State Civil Rights Law.
  - c) Supporting Deposition, RPD 1270, of any witnesses or victim.
  - d) Incident Report.