



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

Office of Police Complaints
Michael G. Tobin, Executive Director

POLICE COMPLAINTS BOARD
Paul Ashton, Chair
Bobbi Strang
Jeffrey Tignor
Earl Fowlkes, Jr.

PCB POLICY REPORT #22-3: Improved Guidance on Communicating with Deaf and Hard of Hearing Community Members

Summary:

The Metropolitan Police Department (MPD) has policies in place that provide guidance to its officers with respect to interacting with community members who are deaf or hard of hearing (D/HH).¹ However, a review of MPD's policies and procedures conducted by the Office of Police Complaints (OPC) revealed that this policy, published in General Order 304.14, Interaction with Deaf and Hard of Hearing Persons, only provides guidance on how officers should respond *after* an officer has already identified a member of the community as D/HH.² No MPD guidance currently exists for members on how to identify a member of the community as D/HH. This results in a few potential problems. First, lack of adequate training with respect to officers' recognition of D/HH community members can delay meaningful communications between community members and police officers and could potentially hinder police activities and investigations. Second, and more impactfully, examples from other jurisdictions have demonstrated a disturbing trend of unnecessary or excessive use of force incidents resulting from officers who misinterpret silence or use of American Sign Language (ASL) as resistance to their orders. Beyond the ramifications that usually result from use of force incidents, an officer's inability to properly identify a D/HH individual and the ensuing miscommunications caused by lack of adequate training could be a violation of Title II of the Americans with Disabilities Act (ADA) and could result in otherwise avoidable civil liability for the District, MPD, and its members.³ This report examines the potential issues that can arise for MPD and its officers when they lack appropriate training on identifying community members who are D/HH and specifically examines five examples from other jurisdictions.^{4 5 6}

¹ See Metropolitan Police Department, General Order 304.14, Interaction with Deaf and Hard of Hearing Persons (November 27, 2013), available at https://go.mpdonline.com/GO/GO_304_14.pdf

² *Id.*

³ *Lewis v. Truitt*, 960 F. Supp 175 (S.D. Ind. 1997) (finding that a police officer arresting a deaf civilian for failing to comply with police requests when the deaf civilian could not hear the requests constituted a prima facie case of discrimination).

⁴ The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

⁵ The PCB would like to recognize and thank legal intern Matthew Sokol for his contributions to this policy recommendation.

⁶ MPD generally agreed with all recommendations discussed in this report.

Background:

Washington, D.C. has over 14,000 D/HH residents⁷, one of the largest D/HH populations in the U.S. This is largely due to Gallaudet University being located in the Northeast quadrant of the city.⁸ The relative density of the D/HH population in D.C. highlights the need for MPD to have best practices in place to account for any interactions its officers will likely have with this segment of the community.

In 1990, President George H.W. Bush signed the ADA into law to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁹ Title II of the ADA provides that “no qualified individual with a disability shall [...] be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”¹⁰ Under the ADA, a disability is defined as “a physical or mental impairment that substantially limits one or more major life activities [of the person with the disability].”¹¹ The ADA lists the ability to hear among the examples of a major life activity.¹² In addition, the Department of Justice (DOJ) has made clear that police and other law enforcement agencies are considered public entities under the ADA.¹³

OPC acknowledges that MPD has taken meaningful steps to ensure compliance with the ADA, particularly when it comes to the D/HH population. MPD established the Deaf and Hard of Hearing Liaison Unit (DHHU) in April 2002 to assist MPD in communicating with D/HH individuals in the District. In addition to General Order 304.14, in August 2000 MPD issued SO-00-19 which establishes best practices and guidelines for MPD to comply with Title II of the ADA.¹⁴ SO-00-19, Part III, discusses when reasonable alternatives to standard operating procedures are required whenever MPD officers interact with community members covered by the ADA.¹⁵ It requires that anytime an officer makes contact with a community member “who appears to need assistance with any life process,” that the officer take measures or enlist assistance to ensure the aid and comfort of that civilian.¹⁶ However, in arrest situations, officers are asked to take necessary precautions for the safety of themselves and others, with accessibility needs being deemed secondary.¹⁷ Importantly, there is no language in SO-00-19 addressing

⁷ U.S. Census Bureau (2020) retrieved from:

<https://data.census.gov/cedsci/table?q=District%20of%20Columbia&t=Disability&y=2020>

⁸ Gallaudet University, <https://www.gallaudet.edu/departments-of-deaf-studies/>

⁹ 42 U.S.C. § 12101(b)(1).

¹⁰ § 12132.

¹¹ § 12102(1).

¹² § 12102(2)(A).

¹³ Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act, Department of Justice., (Jan. 2017), available at <https://www.ada.gov/cjta.html>

¹⁴ See SO-00-19, Compliance with Title II of the Americans with Disabilities Act, available at <https://go.mpdconline.com/GO/SO-00-19.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ “The comfort or convenience of a prisoner takes on a secondary, but nevertheless important priority.” *Id.*

situations that fall between a field contact and an arrest, such as investigations or responses to calls for service.

This gap in language is significant given the language in General Order 901.07, Use of Force, which discusses when a use of force is justified against a suspect who is a “passive resister,” a category defined as a person whose “noncompliance offers no physical or mechanical resistance” and who “does not respond to the member’s lawful requests or commands.”¹⁸ General Order 901.07, Part II.A.5 allows for the use of “control holds” when a community member passively resists an officer’s lawful requests.¹⁹ Accordingly, if an officer does not recognize a person as being disabled, particularly with disabilities that prevent compliance with lawful requests, then MPD’s directives allow officers to use force for to gain compliance despite the perceived non-compliance being the direct result of the community member’s disability. As the examples below will illustrate, members of the D/HH community are often mistaken for passive resisters by police officers, which places them at a higher risk for unnecessary or excessive uses of force.

Examples from Other Jurisdictions:

While there have been no recently publicized examples of MPD officers using unnecessary or excessive force against D/HH community members, nor complaints made to OPC, it is illustrative to look at specific examples from other jurisdictions that show the potential consequences of assuming non-compliance when a civilian is incapable of complying due to a disability.

Example 1: In May 2020 during a protest in Austin, TX, Tyree Talley was shot several times with rubber bullets after he did not comply with a request to leave the scene. Mr. Talley did not comply with the officers’ orders because he is deaf and could not hear the warnings given by the officers.²⁰

Example 2: In September 2017 Magdiel Sanchez was shot and killed by Oklahoma City police officers after he did not respond to their verbal orders to drop a short metal pipe he used to help him communicate. The shooting occurred despite onlookers shouting to the officers that Sanchez was deaf and could not hear their orders.²¹

Example 3: In January 2014 a 64-year-old man named Pearl Pearson was punched in the face and pulled from his car by Oklahoma City police officers because he did not comply with their verbal orders. Mr. Pearson was attempting to show the patrolmen a placard that stated he was deaf when one of the officers on the scene

¹⁸ See General Order 901.07, Use of Force, available at https://go.mpdconline.com/GO/GO_901_07.pdf

¹⁹ *Id.* at Part II.A.5.

²⁰ Ramkissoon, Jaelyn, “Lawsuit: APD Officer Shot Multiple Non-Lethal Rounds at Deaf Man at May 2020 Protest without Alerting Him,” March 15, 2021, available at: <https://www.kxan.com/news/local/austin/lawsuit-apd-officer-shot-multiple-non-lethal-rounds-at-deaf-man-at-may-2020-protest-without-alerting-him/>

²¹ Fields-Myer, Amiel, “When Police Officers Don’t Know about the ADA,” September 26, 2017, available at: <https://www.theatlantic.com/politics/archive/2017/09/the-steadily-problematic-interactions-between-deaf-americans-and-police/541083/>

misinterpreted his movements as an attempt to reach for a weapon. The police officers subsequently arrested Mr. Pearson for resisting arrest.²²

Example 4: In February 2013 Jonathan Meister was moving his belongings out of a friend's house when Hawthorne, CA Police Department officers mistook him for a burglar. The officers misinterpreted his attempt to use his hands to communicate with them as acts of resistance and aggression. As a result, the officers punched, kicked, tased, and choked him to gain compliance.²³

Example 5: In 2012, Robert Kim pulled to the side of the road to fix a flat tire when he experienced acute symptoms of his diabetes. He sat down on the grass, and when Bridgeton, MO police officers arrived, he tried to inform them that he was deaf, that he had trouble speaking, and that he was in diabetic shock. Instead of attempting to get Mr. Kim medical attention, the officers proceeded "to beat and taser Kim for 'failing to respond' to their 'verbal commands.'"²⁴ One of the involved officers characterized Mr. Kim's use of sign language as "aggressive hand signaling" and arrested him for resisting arrest.

These examples demonstrate the importance of communication and taking steps to ensure community members understand orders before presuming noncompliance. These issues, as made clear in the above examples, are mostly prevalent with civilians who are D/HH. This is particularly significant in D.C., given that D.C. has such a large D/HH population.

DOJ Guidance:

In 2006, the DOJ published guidance for law enforcement agencies on the topic of communicating with D/HH populations.²⁵ The report lists several requirements for law enforcement agencies under the ADA:

- "Law enforcement agencies must provide the communication aids and services needed to communicate effectively with people who are deaf or hard of hearing, except when a particular aid or service would result in an undue burden or a fundamental change in the nature of the law enforcement services being provided.
- Agencies must give primary consideration to providing the aid or service requested by the person with the hearing disability.
- Agencies cannot charge the person for [the cost of] communication aids or services provided.

²² Moon, Patti, "Troopers Cleared of Wrongdoing in Violent Arrest of 64 Year Old Man," February 27, 2014, available at: <https://www.koco.com/article/troopers-cleared-of-wrongdoing-in-violent-arrest-of-64-year-old-man/4297402>

²³ "Hawthorne Police Accused of Beating Deaf Man," February 18, 2014, available at:

<https://www.nbctlosangeles.com/news/local/lawsuit-hawthorne-police-allegedly-beat-deaf-man/2089920/>

²⁴ "Police Officers Beating Deaf People and Getting Away with It," April 24, 2014, available at:

<https://www.ocalapost.com/police-officers-beating-deaf-people/>

²⁵ Communicating with People who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers, available at <https://www.ada.gov/lawenfcomm.htm>

- Agencies do *not* have to provide personally prescribed devices such as hearing aids.
- When interpreters are needed, agencies must provide interpreters who can interpret effectively, accurately, and impartially.
- Only the head of the agency or his or her designee can make the determination that a particular aid or service would cause an undue burden or a fundamental change in the nature of the law enforcement services being provided.”²⁶

The report also provides some practical suggestions for determining if a person is D/HH and for communication with D/HH populations. Some notable suggestions include²⁷:

- “Before speaking, get the person’s attention with a wave of the hand or a gentle tap on the shoulder.
- Face the person and do not turn away while speaking.
- Try to converse in a well-lit area.
- Do not cover your mouth or chew gum.
- If a person is wearing a hearing aid, do not assume the individual can hear you.
- Use visual aids when possible, such as pointing to printed information on a citation or other document.”
- Remember that only about one third of spoken words can be understood by speech reading.”
- When communicating by writing notes, keep in mind that some individuals who use sign language may lack good English reading and writing skills.”
- If someone with a hearing disability cannot understand you, write a note to ask him or her what communication aid or service is needed.”
- Do not use family members or children as interpreters. They may lack the vocabulary or the impartiality needed to interpret effectively.”

OPC’s review of MPD policies and procedures revealed that MPD has incorporated some of the DOJ guidelines into its directives, but not all of them. Considering the guidance was issued in 2006 and updated in 2020, OPC believes that MPD should update its directives to be current and in compliance with all DOJ guidelines.

Recommendations:

1. MPD should update General Order 304.14 and SO-00-19 to comply with *all* DOJ guidelines for interacting with D/HH community members. The guidelines provide a strong foundation for ensuring ADA compliance. While General Order 304.14 provides some helpful guidance when interacting with D/HH civilians, integrating the more thorough guidelines suggested by the DOJ could help MPD become a nationwide leader and model agency with respect to being a D/HH-friendly police department.
2. MPD should update General Orders 901.07, 304.14, and SO-00-19 to require that officers take meaningful steps to ensure any perceived non-compliance by a community member

²⁶ *Id.*

²⁷ *Id.*

is not the result of a disability before using any level of force unless there is an immediate threat to the health and safety of another member of the community or the officer.

3. MPD should reissue the updated version of SO-00-19 as a standalone general order. In the alternative, MPD should update General Order 100.14, Compliance with Title I of the Americans with Disabilities Act, to incorporate the policies and procedures outlined in the updated version of SO-00-19 into a unified directive on compliance with the ADA.
4. MPD should provide updated training for all members to ensure they are familiar with the best practices for interacting with members of the D/HH community and the changes made to General Orders 901.07, 304.14, and SO-00-19. This can be accomplished through roll call trainings and by offering a training module at MPD's annual Professional Development Training.
5. MPD should offer ASL and Signed English trainings to its officers outside of the DHHU and incentivize its officers to attend. More officers in the field who know ASL, even if it is at a rudimentary or beginner level, will help ensure effective communication and reduce delays caused by obtaining interpreters. This need is heightened by D.C.'s large D/HH population. Avoiding such delays not only benefits the civilians who otherwise would be detained longer than necessary, but also helps officers get the information they need quicker and more efficiently.