

POLICE SERVICE TO DISABLED PERSONS WHO USE SERVICE ANIMALS



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

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THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CHARLES H. RAMSEY**

August 17, 2006

POLICE COMPLAINTS BOARD

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Table of Contents

I. Introduction and Overview	1
II. Current MPD Policy and Training on the ADA	1
III. The Policy Gap and Its Consequences.....	2
IV. Practices in Other Jurisdictions.....	3
V. Essential Information About Service Animals	3
A. MPD Officer Interaction with Disabled Persons Who Use Service Animals.....	3
B. Public Accommodations	4
1. District of Columbia Law on Public Accommodations and Use of Service Animals	5
2. Federal Law – ADA Provisions on Public Accommodations and Service Animals	5
C. Attacks on Service Animals by Other Animals	7
VI. Recommendations.....	7

I. INTRODUCTION AND OVERVIEW

The Office of Police Complaints (OPC), and its governing body, the Police Complaints Board (PCB), were created by statute in 1999 to investigate and resolve police misconduct complaints filed by the public against Metropolitan Police Department (MPD) and D.C. Housing Authority Police Department (DCHAPD) officers.¹ In the course of carrying out this mission, PCB and OPC regularly monitor the nature, severity, and frequency of allegations contained in the complaints. This review brings to light both patterns of conduct that may warrant corrective action as well as individual incidents that reveal the need for MPD to create policies or procedures. When PCB becomes aware of a policy gap that, if addressed, may reduce the incidence of police misconduct, it is authorized to recommend changes to the Mayor, the Council of the District of Columbia, and MPD's Chief of Police.² It is pursuant to this statutory authority that PCB urges adoption of the recommendations contained in this report.³

The way police interact with people with disabilities is an important aspect of the District's overall commitment to professionalism in providing police service. MPD officer interaction with disabled persons is also governed by federal disability rights law, most notably the Americans with Disabilities Act (ADA).⁴ Accordingly, MPD has made taken important steps to improve communication with persons with disabilities. For example, teletype (TTY) machines are now installed at all principal police facilities. Nevertheless, a complaint filed with OPC recently highlighted the fact that MPD does not have a written policy or training on an officer's obligations to persons with disabilities who use service animals. As a result, PCB looked into this issue and recommends that MPD take steps to create such a policy along with appropriate training.

II. CURRENT MPD POLICY AND TRAINING ON THE ADA

MPD Special Order 00-19, Compliance with Title II of the Americans with Disabilities Act, is the Department's main directive on ADA requirements. It explains that Title II of the ADA prohibits MPD officers from discriminating against individuals with disabilities in the course of providing police service to the public. The order acknowledges the Department's obligation to make all MPD facilities accessible to persons with disabilities. The order also states that officers are obligated to take emergency measures when they come into contact with

¹ D.C. Official Code § 5-1101, *et seq.*

² D.C. Official Code § 5-1104(d).

³ PCB would like to acknowledge the assistance of OPC's staff in preparing this report and accompanying recommendations. OPC's executive director, Philip K. Eure, and deputy director, Thomas E. Sharp, managed the project. Other OPC staff who performed research or assisted in drafting the report include special assistant Angela Kiper, senior investigator Natasha Bryan, investigators Megan Rowan and Felicia Day, and law clerks Phillip Bach, a student at Fordham University School of Law, and Alejandro Soto-Vigil, a student at University of the District of Columbia School of Law.

⁴ See Americans with Disabilities Act of 1990 as amended, 42 U.S.C. § 12101 *et seq.*

disabled persons who appear to need assistance with a life process. The order directs officers to take special precautions in arresting, transporting, booking and holding persons with various disabilities such as blindness, hearing impairment, use of limb prosthetics, and serious medical problems. The order also directs officers' attention to several other general orders that address procedures to be followed in assisting homeless persons, mentally ill persons, intoxicated persons, persons with communicable diseases, and persons with special medical problems.

The order makes no reference, however, to the use of service animals by disabled persons and provides no guidance or direction to officers on this issue. Nor do any of MPD's other general orders address the Department's legal obligations to disabled persons who are assisted by service animals.

MPD's in-service and recruit training includes a segment on disabled persons. However, based on the information provided to OPC by MPD, it does not appear that there is any training material that specifically addresses service animals, nor does it appear that this topic is covered as part of the current MPD training on disabilities or in any other MPD training course.

III. THE POLICY GAP AND ITS CONSEQUENCES

The lack of a departmental general order and training that specifically address service animals increases the risk that an MPD officer may respond to a disabled person who uses a service animal in a manner that constitutes a violation of the ADA. If an ADA violation were to occur, the District could be subject to legal action, as Title II of the ADA may be enforced through litigation brought by private individuals, or by several federal agencies, including the U.S. Department of Justice.⁵ Moreover, private plaintiffs may be entitled to compensatory damages⁶ and reasonable attorneys' fees,⁷ in addition to injunctive relief. Municipalities also may be liable under Title II for failure to adequately train police officers on dealing with disabled persons.⁸

Besides legal action, other consequences could follow, including unfavorable media attention and increased pressure and scrutiny from disability-rights organizations and the public. MPD's progress in improving community relations could be negatively impacted if officers are perceived as not appropriately responding to disabled persons.

⁵ See U.S. Dept. of Justice, Title II Technical Assistance Manual, <http://www.usdoj.gov/crt/ada/taman2.html#II-9.0000>.

⁶ See U.S. Dept. of Justice, ADA Title II Technical Assistance Manual, 1994 Supplement (1994), <http://www.ada.gov/taman2up.html> ("A private plaintiff under title II is entitled to all of the remedies available under section 504 of the Rehabilitation Act of 1973, including compensatory damages").

⁷ See U.S. Dept. of Justice, Title II Highlights, <http://www.ada.gov/t2hlt95.htm>.

⁸ See *Jackson v. Inhabitants of Sanford*, 1994 U.S. Dist. LEXIS 15367, 3 Am. Disabilities Cas. (BNA) 1366 (D. Me. 1994) (denying summary judgment to defendants on Title II claims for, *inter alia*, failure to train police to recognize symptoms of disabilities and failure to modify police policies, practices and procedures to prevent discriminatory treatment of the disabled).

IV. PRACTICES IN OTHER JURISDICTIONS

PCB reviewed police department practices on responding to situations involving service animals in order to learn more about what MPD could do to address this issue. PCB found that San Francisco is a leading jurisdiction on ADA compliance training. The San Francisco Police Department (SFPD) has developed an extensive Disabilities Awareness Guide that provides information on ADA requirements and California disability rights law. This manual includes roll call training lessons on Interacting with Persons with Disabilities, and Guide Dogs and Service Animals, which address relevant ADA provisions and issues in a question and answer format. SFPD also uses a video produced by the California Hotel and Lodging Association entitled Responding to Service Animal Calls. This short and informative video is ideal for helping officers quickly understand basic information about complying with the ADA in situations involving disabled persons who use service animals.

Fresno, California, has an ADA Advisory Council that provides guidance to city agencies on compliance issues. Some of its publications contain information about protecting the rights of disabled persons who use service animals. Other police departments, such as Oakland and Seattle, include information about service animals that assist disabled persons in their training materials and general orders.

V. ESSENTIAL INFORMATION ABOUT SERVICE ANIMALS

In the course of its research, PCB learned that there is certain basic information about service animals, and the protection they are afforded under the ADA and District of Columbia law, that MPD officers should know. Issues relating to service animals about which MPD officers should be aware include: (1) the obligation of MPD officers not to discriminate against persons who use service animals in the course of providing police service to the public; (2) the right of disabled persons with service animals to use public accommodations; and (3) the need for immediate and professional response to attacks on service animals by other animals.

A. MPD Officer Interaction with Disabled Persons Who Use Service Animals

Any MPD training materials or general orders on service animals should clarify that Title II of the ADA prohibits MPD officers from discriminating against disabled persons who use service animals. Specifically, officers should be aware that:

- The ADA requires police officers to modify their practices and procedures as necessary to ensure that persons with disabilities, including those who rely upon service animals, are provided with police service to the same degree as non-disabled persons.⁹

⁹ See “Commonly Asked Questions about Service Animals in Places of Business,” U.S. Dep’t of Justice, Civil Rights Division, Disability Rights Section, available at www.usdoj.gov/crt/ada/animal.htm.

- A police officer’s failure to provide full service to a disabled person because that person relies upon a service animal constitutes unlawful discrimination under the ADA and the D.C. Human Rights Act.¹⁰
- The ADA defines a service animal as “any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.”¹¹
- Service animals are not pets.
- Service animals perform functions such as,
 - Helping blind or visually impaired people to safely negotiate their surroundings;
 - Alerting deaf and hard-of-hearing persons to sounds;
 - Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or
 - Alerting or responding to a disability-related need or emergency (*e.g.*, seizure, extreme social anxiety or panic attack).
- Pursuant to the ADA, an MPD officer may not refuse to assist a disabled person who uses a service animal or insist that the owner put the animal away as a prerequisite to being served. The service animal should be treated as an extension of the person, unless the animal exhibits aggressive behavior.
- Separating a disabled person from his or her service animal may cause serious mobility problems. Therefore, in the event of a police intervention, such as an arrest or response to an emergency, that requires a service animal to be separated from its owner, officers must take whatever special measures are necessary to ensure that the owner’s safety is not jeopardized.

B. Public Accommodations

MPD officers should know about the right of disabled persons who rely on service animals to use public accommodations (*i.e.*, places to which the general public is invited) because police may be called to resolve disputes involving use of service animals in places of public accommodation, and if District of Columbia law has been violated, officers may be required to make an arrest.

¹⁰ See 42 U.S.C. § 12132; *see also* D.C. Official Code § 2-1402.73.

¹¹ See 28 C.F.R. § 36.104.

1. *District of Columbia Law on Public Accommodations and Use of Service Animals*

D.C. Official Code § 7-1002 states:

(a) The blind and otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation in the District of Columbia, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited in the District of Columbia, subject only to the conditions and limitations established by law or in accordance with law applicable alike to all persons.

(b) Every blind person or deaf person shall have the right to be accompanied by a dog guide, in any of the places, accommodations, or conveyances listed in subsection (a) of this section, without being denied access because of the dog guide and required to pay an extra charge for the dog guide; but any blind person or deaf person so accompanied shall be liable for any damage done to the premises or facilities by such dog.

D.C. Official Code § 1007 states:

Any person or the agent of any person in the District of Columbia who denies or interferes with admittance to or enjoyment of any of the places, accommodations, or conveyances listed in §§ 7-1001 and 7-1002 or otherwise interferes with the rights of a blind or otherwise disabled person under § 7-1001, 7-1002, 7-1005, or 7-1006 shall be imprisoned for not longer than 90 days, or fined not more than \$300 or both.

D.C. Official Code § 7-1009 provides:

(3) The term “guide dog” means a dog that is specially trained to assist a blind or deaf person and one which a blind or deaf person relies on for assistance.

The foregoing provisions of District law clearly indicate that physically disabled persons, including those who use guide dogs, are required to be granted full access to public accommodations and may not be charged extra fees for having a guide dog. The law further provides that anyone in the District who interferes with a disabled person’s right of access to public accommodations may be imprisoned for up to 90 days and fined up to \$300.

2. *Federal Law – ADA Provisions on Public Accommodations and Service Animals*

The ADA also guarantees disabled persons, including those who employ service animals, the right to use public accommodations. Pursuant to Title III of the ADA, “privately owned businesses, such as restaurants, hotels, retail stores, taxicabs, theatres, concert halls, and sports

facilities are prohibited from discriminating against individuals with disabilities.”¹² “The ADA requires these businesses to allow people with disabilities to bring their service animals onto the premises in whatever areas customers are generally allowed.”¹³

Although police officers are not required to enforce the ADA’s guarantee of access to public accommodations, disputes in which service animals have been denied access to public accommodations can often be resolved quickly on the scene if police officers are knowledgeable about what the ADA requires. Accordingly, MPD departmental directives and training material on service animals should include the following key points:

- The ADA definition of service animals covers more than just guide dogs, and under the ADA, a service animal may provide services other than those performed by a guide dog for a blind or deaf person. Examples of service animals under the ADA include “seeing eye dogs,” sound alert signal dogs, hearing cats, mobility assistance monkeys, miniature guide horses, and seizure response dogs.
- If a person accompanied by an animal claims that the animal is a service animal, officers may ask the person what service the animal provides; however, officers may not ask the person for proof of his or her disability.¹⁴
- The ADA does not require service animals to be licensed or certified by state or local government, and service animals are not required to wear any tags identifying them as service animals.¹⁵
- Because service animals are not pets, they are exempt from “No Pets” policies at public establishments.¹⁶
- ADA rights are enforceable even if local health regulations provide a more restrictive standard on animals in public places.¹⁷
- Guests of public accommodations with service animals may not be restricted to certain areas.¹⁸

¹² See “Commonly Asked Questions about Service Animals in Places of Business,” U.S. Dep’t of Justice, Civil Rights Division, Disability Rights Section, available at www.usdoj.gov/crt/ada/animal.htm.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

- A service animal that exhibits threatening or aggressive behavior may be excluded from a public accommodation.¹⁹

C. Attacks on Service Animals by Other Animals

Attacks on service animals by pet dogs are a common problem and cause serious mobility problems for disabled persons. Consequently, they require immediate attention and should not be handled as other dog-on-dog attacks. Failure of police officers to assist a disabled person whose service animal has been attacked by an animal that is not a service animal could be construed as refusal to provide police service in violation of the ADA and the D.C. Human Rights Act.

VI. RECOMMENDATIONS

To promote the aims of the ADA – full inclusion of all persons, including those with disabilities, in American society – as well as to avoid the negative consequences of failing to have an adequate policy, MPD should educate its officers about the Department’s and each officer’s legal obligations in interacting with disabled persons who use service animals.

Specifically, PCB recommends that MPD: (1) Issue a general order that provides information to officers on handling requests for service that involve service animals; (2) Include a specific section on service animals in training on disabilities and ADA compliance; and (3) Conduct a roll-call training lesson for all officers on service animals as soon as possible.

¹⁹ *Id.*