

BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 1, 2000

GENERAL ORDER T-19

SUBJECT: AMERICANS WITH DISABILITY ACT

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PURPOSE

1. Quality Services and Compliance

The purpose of this policy is to establish guidelines for Berkeley Police Department employees to provide quality services to people with disabilities, by which to comply with provisions of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act, and state law as amended from time to time, (collectively, "ADA").

The intent of this policy is to address the requirements of the Americans with Disabilities Act (and similarly, Section 504) which state in part: "No qualified individual with a disability shall, on the basis of disability, 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 public entity." This policy and its guidelines are to be implemented consistent with those requirements.

POLICY

2. Access to Programs and Services

It shall be the policy of the Berkeley Police Department to ensure that a consistently high level of police service is provided to all members of the community, including people with disabilities who may require accommodations, auxiliary aids or services, modifications to procedures or practices, or other consideration in order to access these services.

The department will modify its policies, practices, and procedures and provide other accommodation necessary under the ADA, to avoid discriminating based on disability, to the extent such modifications are reasonable, do not fundamentally alter the nature of the services provided, and do not create an undue financial or administrative burden. Nothing in this order is intended to require, or shall be interpreted to require, greater or lesser accommodations than required by the ADA

It is the policy of this Department to afford people with disabilities an opportunity to access its programs and services provided to non-disabled citizens. In its breadth, this policy includes, but is not limited to, services such as first-responder recognition of the nature and characteristics of various disabilities; appropriate physical, communication, and emotional support to people with disabilities who seek to access police services or who come into contact with the police.

Examples include, but are not limited to:

- a. Access to police information, programs, services, and publications for people who have vision impairments, hearing impairments, or impaired cognitive abilities, or other disabilities;

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- b. Recognition of the difference between disability-related characteristics and the characteristics of criminal behavior or of intoxication;
- c. Recognition of symptoms and appropriate medical and emotional support for people experiencing seizures;
- d. Understanding of and appropriate physical support in aiding people who have mobility impairments;
- e. Prompt access to interpreters for people with hearing, cognitive, or speech disabilities who have a need to communicate with police personnel;
- f. Prompt around-the-clock access to professional support systems for people with mental disabilities;
- g. Other accommodations to ensure service and access to all people with visual, mental, emotional and medical disabilities including any invisible disabilities such as diabetes, epilepsy, multiple sclerosis, loss of hearing and others.

3. Overview of the Guidance

No single policy or procedure can address every detail of police response to all situations involving people with disabilities. It is the intent of this policy and procedure to guide employees in responding to and assisting those people with disabilities with whom they will have the most contact in the performance of their duties and responsibilities. This policy and procedure addresses common police interactions with people with disabilities including those who are complainants, victims, witnesses, arrestees, members of the community who desire to participate in department-sponsored programs, people seeking information, and uninvolved bystanders.

In all cases, employees must take steps necessary to assist people with disabilities in accessing the full range of immediate and follow-up services provided by this Department. Consideration must be given to those steps that will lead to a positive outcome while, at all times, maintaining employee or public health or safety.

OVERVIEW OF SPECIFIC DISABILITIES

4. Introduction

"Disability" means a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. "Qualified individual with a disability" means an individual with a disability that meets the essential eligibility requirements for receiving the Department's services, or participating in the Department's programs or activities, with or without accommodation.

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It is not the intent of this policy to provide detailed information on all disabilities. The Department will continue to make information available to employees, through training and other sources, on various disabilities. It is incumbent on all employees to become aware of the characteristics of various disabilities and the needs of people who have them. Employees also should be aware that many people have multiple disabilities or one or more hidden disabilities.

The following section provides a brief overview of several general categories of disabilities and how the Department and its employees should respond to the needs of people with these disabilities.

5. Visual Disabilities

One of the most difficult issues facing people who are blind or vision impaired is identifying police officials. Employees should offer, at the initiation of a contact, detailed information in identifying themselves as members of the Department. Whenever possible, if the presence of a visual disability is known, officers may have dispatch contact the victim or complainant to verify to him or her that a member of the Department has arrived. If needed, badges may be offered to the individual to verify the officer's identity.

Knowing what not to do is as important as knowing what to do to assist a person who is vision impaired. Employees do not need to raise their voice when speaking. To lead a blind person in a particular direction the officer should offer an elbow, if needed, the individual will take the officer's arm for guidance and the officer can proceed a half step ahead of the person being guided.

People with vision impairments may not be able to read printed or other visual materials presented to them, such as a citation or a form that must be signed. Officers should provide alternative format materials or clearly read the material aloud, when necessary for the individual to effectively participate in what is being communicated. See "Effective Communication" and Appendix A

6. Mental, Emotional and Psychological Disabilities

The terms "mental illness," "emotional illness," and numerous other terms describe various disabilities causing psychological disturbances in thinking, feeling, and relating. An estimated ten percent of the population of the United States has some type of mental illness.

Providing accessibility to police services for people with mental, emotional, and psychological disabilities usually involves providing the same general types of assistance anyone might need. At times, exceptional police service and safe custodial care may be required.

When aware of a person's disability, employees must ensure that people with mental, emotional, or psychological disabilities are assisted in accessing agency services, which may require time and patience beyond that usually provided. For

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example, time spent on a call for service may have to be extended in order to reassure the individual, sort facts, interact with family members and others, and bring the call to successful resolution.

When an employee knows that a person taken into custody has a mental, emotional, or psychological disability, the employee must make reasonable efforts, where consistent with appropriate precautions, to use the least restraint necessary, and to protect the arrestee from self-injury.

Frequently, a family member or friend is of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment.

Officers must become familiar with appropriate government agencies, nonprofit agencies, volunteer organizations, and emergency medical services available to provide assistance to people with mental, emotional, and psychological disabilities. If needed, steps should be taken to gain placement for the individual in an appropriate emergency medical, health care, or shelter facility. Appendix A lists some appropriate resources.

Officers must remain familiar with appropriate emergency commitment/detention procedures to be used when providing shelter care and related support to people with mental, emotional or psychological disabilities. These procedures include California Welfare and Institutions Code Sec. 5150.

7. Cognitive Disabilities

Cognitive disabilities are a group of conditions affecting the abilities for knowing (cognition), which encompasses a broad range of developmental disabilities, learning disabilities, impairments associated with aging, traumatic brain injuries, and other impairments of mental ability. Cognitive disabilities and mental illness are distinct conditions, with different causes, although an individual might experience both.

The disabilities in this group vary from mild to profound. Some cognitive impairments are transient and the person recovers function, as from a seizure or mild stroke; some conditions can be progressive, such as Parkinson's or Alzheimer's disease; and some are ongoing and stable, as with mental retardation.

Employees should recognize that people who have cognitive disabilities have varied degrees of intelligence and of limitations to intellectual functioning. The largest percentage of people with mental retardation, for example, is in the ranges termed "mild" or "moderate." When interacting with individuals known to have a cognitive disability, employees should avoid being patronizing. Ask short questions, be patient when waiting for answers, repeat questions and answers if necessary, have individuals repeat the question in their own words, and provide reassurance, if appropriate.

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In many situations, and particularly 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. In responding to the needs of people with severe or profound cognitive disabilities, the aid of family, friends, and neighbors also may be invaluable.

8. Mobility Impairments

Among the disabilities that are the most visibly identifiable are mobility impairments. People with mobility-related impairments include those who have difficulty walking, those who use a wheelchair or other mobility aid, and those who are immobile. Causes of impairments include spinal cord injuries, back injuries, amputation, arthritis, and numerous other conditions.

In a critical or emergency situation, employees should be aware of the safest and most effective methods for assisting people with mobility impairments to avoid causing them unnecessary strain, pain, or injury. Where circumstances permit, officers should ask the individual directly about his or her equipment and how to provide effective assistance. Officers should be alert for the presence of disability-related aids such as respirators, which can easily become disconnected and need to be re-attached or may signal the need for additional care.

In an arrest encounter, mobility devices (such as a cane) may or may not pose a danger to an officer. Since a mobility-impaired individual relies on the device to be able to go places, or simply for seating or for breathing, the device may remain with the individual, if consistent with appropriate precautions against danger. Once an arrestee with a mobility impairment is secure in a cell and the immediate presence of danger is diminished, consideration should be given to returning use of any mobility aids (wheelchair, cane, etc.) so the arrestee has normal mobility in the situation. However, see A Section 17(b) for more detail.

To the extent required by the ADA, Department facilities should be kept accessible to people with mobility impairments. Entrances, interior routes, stairs, drinking fountains, rest rooms, and telephones should accommodate people with mobility impairments, including those who use wheelchairs. Therefore, furniture arrangement and stored materials/equipment must be maintained so they do not create barriers to accessibility. However, nothing in this policy shall require structural changes to existing facilities which are not required by the ADA, i.e., where the Department's service, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

9. Hidden Disabilities

Many disabilities are difficult to notice. An officer's failure to recognize characteristics associated with certain invisible disabilities could have serious consequences for the person with the disability. For example, epilepsy generally has no outward signs unless the person with this disability experiences a seizure.

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An officer's patience and understanding of the characteristics commonly associated with invisible disabilities will lead to a successful outcome. An inaccurate assessment may lead to unnecessary confrontation, injury, and denial of needed medication and/or medical treatment.

As with all types of disabilities, an employee is obligated to protect a disabled individual from unnecessary harm to the extent consistent with employee and public health and safety and the Department's performance of its duties. Standard police procedures, especially the use of weapons, force, or handcuffs, may be more likely to injure a person who has a disability than someone who does not. The individual with a disability has a right to ask that procedures be modified and the officer must consider such a request and respond appropriately.

People with diabetes may have reactions from either too little insulin or too much insulin. Low blood sugar reactions are common and are usually treated by ingesting sugar or taking other nutrition. Care should be taken when detaining someone known to have diabetes so that they are not prevented from getting needed sugar.

Officers should realize that involuntary behavior associated with some invisible disabilities may resemble behavior characteristically exhibited by intoxicated or, less frequently, combative individuals. For example, a person experiencing a mild seizure may appear incoherent and physically unbalanced or may resist an officer if grabbed. These responses are transitory. There are also permanent conditions, such as cerebral palsy, brain injury, or multiple sclerosis that can result in a gait that resembles intoxication.

When aiding a person experiencing a seizure, protection from obstacles, a calm reassuring manner, and patience are important responses. The first procedure should always be to ask the individual involved, if responsive, what the problem is and how to manage it. Persons with seizure disorders often carry information, such as a wallet card or Medi-alert bracelet; officers should look for such a card or bracelet. Refer to Training and Information Bulletin #251, "Seizure-Recognition and Response."

Additionally, family members and friends should be sought to provide information and assistance. Their presence may prove invaluable in understanding the needs of the person with the disability and guiding the officer's actions.

10. Speech and Hearing Disabilities

As with some other invisible disabilities, officers may confuse the behavior of individuals with hearing and speech disabilities with those of people who intentionally refuse to cooperate or those who abuse legal or illegal substances. Officers should be aware that an individual's failure to comply with or respond to verbal orders does not always constitute defiance, but may be the result of that individual's inability to hear the officer or respond verbally.

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Before committing to a course of action, officers should, when there is a reasonable opportunity to do so, attempt to identify whether or not they are dealing with a person who has a communication-related disability. If an individual indicates that he/she has a communication impairment, the officer must ensure that effective communication is provided so both people understand what is communicated. It is essential that officers take extra measures to protect the rights of suspects who are known to be deaf or hard of hearing, or may not have communications comprehension levels sufficient to fully understand, for example, the basic Miranda rights. See "Effective Communication," Section 12.

RESPONSIBILITY OF EMPLOYEES

11. Gaining Knowledge and Showing Respect

People with disabilities may be suspects or arrestees and require detention, transport, and processing. Employees must familiarize themselves with the guidelines in this and related orders and training and information bulletins; see Appendix B. Employees must know and use the proper methods of transport, arrest, and detention to ensure officer safety while providing all reasonable support to an arrestee with a disability.

Employees should develop the ability to recognize the characteristics of various disabilities, including symptoms and physical reactions.

Employees should also recognize that actions or responses of people with certain disabilities might resemble those of people who have abused substances such as alcohol or drugs. At times, people with diabetes, epilepsy, multiple sclerosis, cerebral palsy, speech or hearing impairments, or other disabilities may exhibit such apparent behavior.

Employees should be able to identify and apply appropriate responses, such as emergency medical aid, protecting and/or calming the individual, securing professional medical attention, locating and enlisting support of family and friends, and rendering proper physical support.

No employee should jeopardize his or her safety or that of others in an attempt to accommodate a person with a disability. Nonetheless, individuals with disabilities may present unique issues that require an officer to be open and creative in order to provide the Department's services safely and effectively.

Officers should be able to identify and apply appropriate restraint to a person with a disability, if needed to facilitate an arrest or an emergency response. When affecting an arrest and when assisting in an emergency of a person with a disability, officers should be able to access the support systems necessary to secure the rights of the individual. This may include use of interpreters, personal attendants, and legal guardians.

Keeping in perspective the safety of officers and the public, officers should strive

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to be professional. The professional officer always treats persons with disabilities with as much respect as that offered any other individual.

12. Effective Communication

Successful police contact with citizens -- whether it is a suspect, victim, witness, or complainant with whom the officer is talking -- requires good communication. Effective communication equals accessibility for people who are hearing impaired or who have other communication disabilities. Good communication is a key to gathering information about cases, ensuring public and individual health and safety, and engendering good community relations. Refer to Training and Information Bulletin #237, "Stop and Release Situations in the Field."

Employees should use their total available skills and resources to effectively communicate (total communication) and should employ auxiliary aids and services as needed. Observational skills, awareness of other people's modes of communicating, and knowing when to seek assistance are important methods for understanding and being understood. Officers should address the disabled individual directly, i.e., when an interpreter is used to communicate with a hearing-impaired individual.

Auxiliary aids and services include Interpreters¹, Qualified Interpreters², written materials, note pads, computer-assisted real-time transcription, computers or typewriters, and other effective methods of making orally delivered materials available to individuals with - hearing impairments. Auxiliary aids and services for individuals with vision impairments include tape cassettes, computer diskettes, Braille or large print materials, verbal descriptions, or other effective alternatives to visually delivered materials.

When determining whether auxiliary aids and services are needed, the employee must judge whether communication is truly working without the aid or service. The employee should ask the individual if he or she wants or needs an Interpreter or other auxiliary aid or service of his or her choice. Where an auxiliary aid or service is required to ensure effective communication, primary consideration shall be given to the method requested by the individual. However, if another effective method of communication exists, the Department may provide it instead. Other considerations include the immediacy of need to communicate, the health and safety of the individual or others, whether the aid or service the individual has requested is readily available or would fundamentally alter the service or create an undue financial or administrative burden, and the possibility of completing the communication at another time. Whether an interpreter,

¹ Anyone relied upon to interpret for a hearing-impaired individual must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary ("effective communication").

² "Qualified Interpreter" means an Interpreter certified as competent by an organization approved by the Judicial Council, per the California Evidence Code. See Appendix A for sources of Qualified interpreters.

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Qualified Interpreter, or alternative auxiliary aids should be provided, if requested, depends on the length, complexity, and importance of the conversation.

When a deaf individual wants a friend or family member to interpret, whether or not certified as a Qualified Interpreter, the officer must first determine that he/she can provide effective communication, it is not a conflict for the person, and emotional/personal involvement will not impede the communication. When an interpreter or other requested auxiliary aid is not reasonably available, the employee still must obtain the most effective communication under the circumstances by using other auxiliary aids, or services, such as another employee with signing skills, computer or typewriter, a TDD, or paper and pen, or must set a time to meet later when aids or services are available.

An Interpreter, preferably a Qualified Interpreter, should be provided in situations such as the following, keeping in mind that an inaccurate interpretation or ineffective communication may nullify ability to rely upon statements obtained:

- a. If, after a situation is stabilized and a hearing-impaired individual is arrested, 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;
- b. if an officer needs to interview a suspect with a hearing impairment to determine if there is probable cause to make an arrest;
- c. if an investigating officer interviews a victim or critical witness with a hearing impairment unless the individual indicates that he/she does not need or want to use an Interpreter;
- d. if an officer cannot effectively inform a hearing impaired arrestee of the Miranda warnings³, or is seeking to interrogate a hearing impaired arrestee; Officers should secure the services of an Interpreter to communicate accurately prior to any interrogation of a hearing-impaired individual.

In these circumstances where a Qualified Interpreter cannot, despite a good faith effort, be obtained (i.e., the circumstances do not permit delay), another Interpreter or means of effective communication such as exchanging writings may be used.

In circumstances where no Qualified Interpreter is secured, efforts made to obtain such must be recorded in the police report.

When completing a report about a situation in which an interpreter or other auxiliary services were provided for effective communication, all identifying

³. See section 17(1) regarding Miranda warnings and the hearing impaired.

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information on the Interpreter must be included in the report, including the Interpreter's name, an address and phone number of the Interpreter or the agency supplying the Interpreter, the time the Interpreter/agency was called, and 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. A copy of the written questions and responses must be forwarded with the police report, and the originals must be placed into evidence.

DEPARTMENT RESPONSIBILITIES

13. Administration and Complaint Procedures

The Department shall responsibly administer this policy consistent with overall City of Berkeley ADA compliance efforts. The Department will endeavor to assign adequate resources for this purpose, including but not limited to: designating an employee as ADA service coordinator, resolving complaints in a timely manner, providing appropriate training and information, and including budget line items to fund accommodations. The Commission on Disability shall review revisions or amendments to this order.

Responses to requests for accommodation under this policy shall be made as routinely as practicable. Whenever possible and consistent with the factors discussed above, the employee receiving such a request should respond by promptly providing the

accommodation if reasonable. If appropriate, the employee should consult with a supervisor as a next step. The supervisor should call on the assistance of the ADA, service coordinator or the City's Disability Compliance Coordinator whenever a request cannot be satisfied at the line or division level.

Denial of any specific request for accommodation must be authorized by a Patrol Division Watch Commander or in his/her absence, a supervising sergeant, who shall report it to the Department's ADA service coordinator within twenty-four hours of the denial.

Pursuant to the City's ADA Grievance procedure (AR 1.91, as it may be amended from time to time) the Department shall investigate any complaint against the Department or its employees which alleges denial of accommodation or non-compliance with disability-related civil rights laws with respect to the Department's services and [programs](#). AR 1.91 should be referred to for more details. Generally, however, any individual who disputes a disability-related action or omission of the Department or of an employee of the Department may discuss his/her complaint with the service coordinator. The ADA Service Coordinator may consult with the City's Disability Compliance Coordinator. The ADA service coordinator shall maintain on file for a period of three years a record of the dispute, any findings, the recommendation(s), and the outcome.

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If the dispute is not resolved to the complainant's satisfaction, he or she may file a complaint with the City's Disability Compliance Coordinator. Pursuant to BMC Ch. 3.32.090, as it may be amended from time to time, such complaints may also be filed with the Police Review Commission.

14. A.D.A Service Coordinator

The Department has designated an officer whose duties include those of ADA service coordinator, whose office location, name, and number are listed in Appendix A. The designated person coordinates the Department's efforts to comply with the Act and carry out its responsibilities under this order, including informal investigation of any complaint communicated to the Department alleging noncompliance with disability-related civil rights laws with respect to access to the Department's services and programs. The designated person ensures that the Department's information, equipment, and resources are in place to help implement this order. The designated person collaborates with and serves as liaison to the City's Disability Compliance Coordinator, and, when necessary, to other departments and the public on Departmental disability-related issues.

15. Training and Information

The Department will provide training and information, including this General Order, to all its employees about recognizing of various disabilities and providing appropriate police services to people with disabilities. The Department will provide training, including this General Order, to all officers on appropriate response to both non-arrest and arrest situations involving people with disabilities.

In establishing the need for additional training, if any, the Department will consider requests from employees, the community, the Commission on Disability, and other commissions and departments. Training will use Departmental and outside resources appropriate for the subject and will involve affected persons with disabilities to the maximum extent feasible. Training will be conducted periodically as necessary to maintain the Department's professional skills and knowledge, keep pace with changing disability issues, and help make Berkeley a model in delivery of services to persons with disabilities.

In order for employees to provide the highest level of service or safe custodial care to people with disabilities, the Department, in conjunction with the City's Disability Compliance Program, will develop and regularly update a list of agencies available to provide guidance, support, and direct assistance. The list is Appendix A -

The Department will maintain a roster of support agencies and individuals that may be contacted on a 24-hour-per-day basis to provide support in situations involving people with disabilities. The Department will provide reasonable accommodation to all qualified individuals who have disabilities by contacting

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these agencies when resources within the Department cannot provide a necessary accommodation. The Department will inform staff of appropriate budget codes to pay for accommodations.

16. Routine and Emergency Interaction

In providing routine and emergency services, the Department and its employees will promote and practice equality in response, support, and protection to all people including those with disabilities. Officers will make every effort to access appropriate disability-related support organizations when needed.

a. Communications accessibility

All dispatchers will act as coordinators for communication accessibility and will be trained to recognize characteristics of people whose disabilities may require

special communications techniques and to find methods for providing service. The Department will maintain TDD services for deaf and hearing impaired people and provide direct access to telephone emergency systems for individuals who use TDD's, voice carryover, hearing carryover, or relay services. If the dispatcher or other employee returns a call to someone who initially called via TDD, the employee will call back using a TDD or the California Relay Service. The Department's current TDD number is (510) 644-6565.

b. Access to Department programs

Crime prevention programs such as neighborhood watch, youth programs, inschool programs, and other programs will be made accessible to people with disabilities through outreach, location of accessible facilities, modified program schedules or locations, use of interpreters or other auxiliary aids and services, and other efforts to reasonably accommodate special needs. Planned meetings will offer effective communication appropriate to the expected needs of participants, such as making available, upon request, an assistive listening system or computerassisted real-time transcription for hearing impaired participants. Announcements of public meetings should include information about the availability of auxiliary aids and advise who should be contacted, and by when, to arrange for accommodations.

c. Routine calls for service

People with disabilities may have special needs that may have to be met in order for Department employees to provide the best possible routine police response to calls for service. Officers should be able to identify specific needs of people with disabilities and, first and foremost, should ask the individual what those needs might be.

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Employees should be sensitive to the fact that some people with disabilities may be targeted as crime victims as a direct result of their disability.

Employees should be familiar with techniques they may employ at a scene (during the initial call for service and as part of follow-up) to provide support to people with disabilities. All reasonable steps should be taken to aid people with disabilities in bringing calls for police service to successful completion, which may entail providing auxiliary aids and services including qualified interpreters, written materials, note pads, etc. See "Effective Communication," Section 12.

d. Emergency calls for service

Employees should be able to identify characteristics common to specific disabilities in a crisis or emergency so that appropriate action may be taken to render aid and assistance. Rather than assuming knowledge of how to render aid, employees should seek information from the disabled person. If the person with the disability is unable to communicate clearly by speaking, by writing or pointing, or by using auxiliary aids or services, employees should seek a medical alert bracelet, an instructive wallet card, or similar form of ID, as well as input from family, witnesses, and others to aid in identifying the nature of the disability.

As first responders, all employees should be aware of emergency medical techniques applicable to various disabilities.

e. Criminal activity

Some people with disabilities commit crimes. Generally, people with disabilities who commit crimes or purposely engage in disorderly conduct should not receive preferential treatment. See Section 17, below, for details regarding interaction with disabled suspects and arrestees.

f. Disruptive-appearing behavior

Officers should be aware of the variety of disabilities, which may manifest in ways that appear disruptive, such as Tourette's syndrome involving rude outbursts. An officer should attempt to determine whether conduct that seems disorderly is the manifestation of a disability, which should not, in and of itself; be treated as criminal activity, and may need to be addressed as a medical call, instead of an arrest situation.

An officer should recognize seizure symptoms, which in rare cases include running, spitting, shouting, or flailing movements. Actions during a seizure are undirected and not under conscious control. Do not expect a response from a person during a seizure episode. Realize the person may be easily agitated and may struggle with no hostile intent when grabbed or

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restrained. A calm, nonthreatening tone - is best when talking to someone whose consciousness is impaired. If seizure activity creates a direct threat to that individual or others, or to move a person away from a hazardous or crowded area, a gentle, shepherding motion is most likely to avoid a struggle or subsequent injury. Refer to Training and Information Bulletin #237, "Seizure-Recognition and Response."

In all such situations, officers should take reasonable precaution to protect themselves and others from real harm. Conduct that is the result of a seizure may require medical assistance. Conduct that results from a mental disability, may require help from the mobile crisis team.

17. Arrest and Incarceration

Employees should utilize appropriate precautions and safety techniques in arresting and incarcerating all people, whether or not they have a disability. Officers should follow all policies and standard techniques for arrest and incarceration when taking a person with a disability into custody.

Consideration should be given to the special needs of some people with known disabilities in an arrest situation. Response in these situations requires discretion and will be based on information given by the individual with a disability and, in great part, on the officer's knowledge of characteristics and severity of the disability, the level of resistance exhibited by the suspect, and immediacy of the situation. In arrest and incarceration situations, employees must consider the following:

- a. A person whose disability affects the muscular and/or skeletal system may not be able to be restrained using handcuffs or other standard techniques which may be unnecessarily painful or even injurious; refer to General Order H-6. Officers should consider, where it is safe and effective to do so, restraining deaf persons who use sign language in a manner that does not prevent using their hands for communication; refer to General Order H-6. Alternative methods of safe and accessible transport or restraint (transport vans, seat belts) should be sought for these situations.
- b. Unless there are objective reasons to incarcerate a non-ambulatory arrestee, such as a threat to public safety or a risk of flight, the Department should cite-release non-ambulatory arrestees. Refer to General Order C-10 Citation Releases. For physically disabled persons who are not cite-released, the City shall make its best efforts to expedite the scheduling of an arraignment.
- c. Some people with disabilities require physical aids (for example, canes, wheel chairs, leg braces, breathing or life-support equipment, service animals, eyeglasses) to maintain their mobility. Once the immediate presence of danger has diminished and the suspect is safely incarcerated,

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consideration should be given to returning mobility aids that have been taken. If mobility aids must be withheld, the prisoner must be closely monitored to ensure that his or her needs are met, to prevent injury, and to determine whether changes in the situation warrant return of the mobility aids. The Department will withhold any physical aid it reasonably concludes poses a health or securities risk.

- d. Every reasonable effort should be made to ensure that arrestees dependent on particular local services for healthcare or communication are not transferred to other facilities while under the jurisdiction of the Berkeley Police Department. Non-ambulatory and other disabled persons may require local incarceration to continue to receive personal assistance or sign language services or other crucial supports. Non-ambulatory prisoners shall generally be incarcerated in the , Berkeley jail in an accessible detention room. See section f below, for exceptions. The same (or better) amenities or programs will be provided to non-ambulatory prisoners as provided to other prisoners detained in the Berkeley jail. Prisoners shall be allowed to meet with visitors and attorneys in private and to have interpreters present, in their detention rooms if other accessible facilities are not available, subject to observation sufficient to ensure security.
- e. Persons with disabilities who require medical care solely as a result of their disability and who require use of attendants to provide that care shall be incarcerated in the City's facility and not transferred to another facility if their necessary attendant(s) consent in writing (1) to be incarcerated with the prisoner who has a disability during the period needed for attendant care and (2) to give a minimum of two-hours notice of any withdrawal of said consent. Under such circumstances, necessary attendants giving such consent may, at the disabled prisoner's request, be incarcerated with the prisoner during the period needed for attendant care, so long as the City determines they do not pose a health or security risk. If a disabled person who is arrested needs to contact one or more attendants for assistance, he or she shall be accorded a reasonable opportunity to do so.

If necessary, arrestees will be allowed to contact "Easy Does It" or other appropriate services which are available to arrange for attendant services.
- f. Exceptional circumstances may arise in which it is appropriate to transfer a non-ambulatory prisoner to another facility. Such circumstances might include behavior (as opposed to speech) that objectively creates a risk of security; violent behavior; or a natural disaster, the prisoner requires services that can only be provided at another facility; or the accessible detention areas of the City's facility are occupied by other disabled prisoners. If a non-ambulatory prisoner who would otherwise be detained in the City's facility is transferred for any other reason, a written report shall be provided to the Chief of Police and the prisoner within twenty-four

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hours detailing the reasons and justification for such transfer. Two hours is generally the minimum time adequate to make arrangement for other attendants or for transportation of the prisoner to another facility. The prisoner transferred shall be provided with disabled-accessible transportation to the vicinity of the Berkeley jail upon release from the other facility, or returned to his/her residence, so long as it is in Berkeley if that is the prisoner's wish.

- g. Reasonable accommodation shall be made for arrestees who use portable medical equipment and durable medical goods needed and provided by the disabled arrestee, subject to legitimate security concerns.
- h. Prescribed medication, including Oxygen, may be required at regular intervals by people with certain disabilities, for example, diabetes or epilepsy. Upon learning that such medication is required, if adequate information cannot be obtained from the disabled prisoner, then medical personnel (the suspect's physician, on-call medical stag, emergency room medical staff) should promptly be contacted to determine the importance of administering the medication, potential for overdose, etc. Non-ambulatory prisoners who use prescription drugs shall have them administered in the same manner such drugs are administered to non-disabled prisoners in the Berkeley jail.
- i. Some people with disabilities may not understand their individual rights in an arrest situation, particularly if they have a communication or cognitive impairment. (For example, there is no sign language for the term "waive" in regard to the Miranda rights. Yet, in an effort to be cooperative, a suspect who is deaf may acknowledge that he or she is willing to give up his or her rights.) Officers must take extra care to ensure that the rights of the accused are protected. Refer to the MIRANDA WARNING.

Additionally, the Department will insure that deaf detainees have access to telephones on the same basis as other detainees. A TDD is available to deaf detainees to insure equal telephone access. Hearing impaired individuals who require quiet surroundings or amplification in order to use the telephone, will be given such accommodations.

- j. Lack of speech or other speech impairment may make it difficult for a suspect to notify the arresting officer or jailer of an urgent need. Frequent cell checks should be conducted, and instructions given to staff on incoming shifts, to ensure that the jailer knows when any urgent need arises.
 - 1. The Department will make reasonable efforts to notify other entities involved with a disabled arrestee or prisoner, such as the Public Defender's office, a hospital, jail, or other facility to which the individual is transferred, a court before which the individual is

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scheduled to appear, of that individual's known needs for accommodation.

References: California Welfare and Institutions Code Section 5150
Training and Information Bulletin Number 251, "Seizures- Recognition and Response"
Training and Information Bulletin Number 237, "Stop and Release Situations in the Field"
Training and Information Bulletin Number 133, "Miranda Warning"
City of Berkeley Administrative Regulation 1.91
General Orders C-10 and H-6