

<p style="text-align: center;">State of Vermont Agency of Human Services Department of Corrections</p>	<p style="text-align: center;">Title: Effective Communication for Deaf and Hearing Impaired</p>		<p style="text-align: center;">Page 1 of 9</p>
<p>Chapter: Facilities- General</p>	<p style="text-align: center;">#316</p>	<p>Supersedes: NEW</p>	
<p>Local Procedure(s) Required: No local procedure required. Applicability: All DOC staff, contractors and volunteers Security Level: "B" - Anyone may have access to this document.</p>			
<p style="text-align: center;"><u>SIGNED</u> Nicholas J. Deml, Commissioner</p>	<p style="text-align: center;"><u>12/20 /2021</u> Date Signed</p>	<p style="text-align: center;"><u>1/26 /2022</u> Effective Date</p>	

PURPOSE

The purpose of this policy is to establish clear guidelines for Vermont Department of Corrections (DOC) staff and contractors when interacting with an incarcerated individual with a hearing disability.

AUTHORITY

Title II of the Americans with Disabilities Act of 1990; 42 U.S.C. §§ 12131-12134; 28 C.F.R. § 35.160-35.164; 9 V.S.A § 4500

POLICY

It is DOC policy to identify incarcerated individuals with a hearing disability as soon as reasonably possible and provide access to a qualified interpreter or other appropriate auxiliary aids and services to ensure effective communication. DOC shall take appropriate steps to ensure communications with persons with a hearing disability are as effective as communications with other incarcerated individuals. DOC shall also provide incarcerated individuals with a hearing disability equal opportunity to participate in and enjoy the benefits of DOC services, programs, and activities.

DEFINITIONS

“Effective communication” means communication with individuals who have hearing disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity.

“Incarcerated Individual with Hearing Disabilities” means an incarcerated individual who, if unaided by hearing aids or any medical device, is unable to hear in either one or both ears to a sufficient degree to be able to understand the spoken word. Throughout this document, the term “incarcerated individual with hearing disabilities” is used to refer to incarcerated individuals who are deaf or hard of hearing.

“Qualified Interpreter” means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the individual with hearing disabilities’ language, skills and education. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. See 28 C.F.R. § 35.104, Pt. 35, App. A. “Qualified Interpreter.” A Certified Deaf Interpreter is also considered a qualified interpreter.

“Secondary Hearing Assessment” means a hearing assessment to (1) determine whether an incarcerated individual has a hearing disability, (2) obtain additional information on the extent of an incarcerated individual’s hearing disability, and/or (3) help determine what auxiliary aids and services are required to ensure effective communication. It may be ordered either after the initial Intake Hearing Screening, or when an individual who has been incarcerated presents with a suspected hearing disability during incarceration. A Secondary Hearing Screening can be ordered at any time during an individual’s incarceration.

“Text Telephone/Teletype Terminal/Teletypewriter” (TTY) means a device that allows individuals with hearing disabilities to use a telephone to type and send text messages.

“Telecommunications Relay Service” (TRS) means an operator service that allows people with hearing disabilities to place calls to standard telephone users via keyboard or assistive device.

“Videophone” means a telephone with a camera and screen for visual, real-time communication.

“Video Relay Service” (VRS) means a telephone service using interpreters connected to callers by video hook-up that is designed to provide persons with hearing disabilities who use American Sign Language with telephone services that are functionally equivalent to those provided to users who are hearing.

“Video Remote Interpreting” (VRI) means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 35.160(d).

General Guidelines

A. Initial Intake

1. All staff will follow DOC policy on implementation of the Americans with Disabilities Act to identify any person with a hearing disability being admitted into a correctional facility to include ensuring the *Offender/Inmate Orientation to ADA Form* and the first section of the *Intake Hearing Assessment* form are completed.
2. If DOC suspects, or the person indicates (either in the *Request Section* of the *Request for Reasonable Accommodation/Response Form* or by the responses to the *Intake Hearing Assessment Form*) a hearing disability at the time of intake, DOC will provide access to Qualified Interpreters, or other appropriate auxiliary aids and services to aid in the intake process. Primary consideration will be given to the request of the incarcerated individual for a qualified interpreter or a specific auxiliary aid or service.
 - a. In circumstances where an interpreter, aid, or service is requested to ensure effective communication, Booking staff will immediately notify the Shift Supervisor, to obtain an interpreter, either in person or by video telephone or video relay, or other auxiliary aid or service.
 - b. The interpreters must be provided within 2 hours of a request.
3. Persons who indicate they are deaf, hard of hearing, or have a speech limitation at the time of intake will be referred to the Facility ADA Coordinator, designee, for development of a *Communication Plan*.
 - a. The Facility ADA Coordinator, or designee, will complete as much of the Communication Plan as possible at intake.
 - b. This Communication Plan will be considered temporary until it is completed after any necessary hearing screenings or assessments as set out in Section B.
4. If a person indicates at the time of facility intake that they are not deaf, hard of hearing, or have a speech limitation, they will sign the *Intake Hearing Assessment Form* confirming the information at the time of intake.
5. During the intake process, the incarcerated individual will be offered the opportunity to have a distinguished colored identification (“ID”) bracelet that clearly identifies the person as having a hearing disability.
 - a. Waiver of the distinguished colored ID bracelet does not waive the person’s right and/or access to eligible services. The incarcerated individual is not precluded from changing their preference during the period of incarceration to remove the waiver and may opt to have a distinguished colored ID bracelet issued at any time.
 - b. The distinguished colored ID bracelet will be issued within 10 days of a request.
 - c. The distinguished colored ID bracelet will signify to staff that the incarcerated individual has a hearing disability and as a result, may require auxiliary aids and services to understand and carry out correctional personnel’s commands. The distinguished colored ID bracelet will also indicate that additional information about specific auxiliary aids and services for the individual is available in the individual’s Communication Plan or from the Facility ADA Coordinator.

B. Hearing Screening

1. The Facility ADA Coordinator and the Health Services Administrator will be notified when an incarcerated person identified with a hearing disability is admitted.
2. Within 72 hours of intake, a Qualified Health Care Professional (QHCP) will screen every person referred to the HSA for a hearing assessment based on the intake process.
3. QHCP staff will submit the screening *Intake Hearing Assessment Form* to the Facility ADA Coordinator.
4. The Facility ADA Coordinator will document the information on the *Intake Hearing Assessment Form* in the Offender Management System.
5. If a second hearing assessment is indicated, the QHCP will make a referral to an appropriate licensed professional.
6. The secondary hearing assessment referral must be made to an appropriate licensed professional within 7 calendar days of the Intake Hearing Screening and documented on the *Intake Hearing Assessment Form*. An appointment will be made within 30 days of the referral.
7. If extenuating circumstances prevent an appointment within 30 days, an explanation for the delay must be documented on the *Intake Hearing Assessment Form* and the appointment must be made no later than 60 days from the date of the referral.
8. An incarcerated individual may request, at any time during incarceration, an assessment for a hearing disability. All requests for an assessment will be forwarded to the Facility ADA Coordinator and the Facility HSA using the established procedure on ADA accommodation requests.
 - a. Referrals for Secondary Hearing Assessments under this section must be made within 14 days of the determination or request.
 - b. If hearing aids or other auxiliary devices are recommended as a result of the Secondary Hearing Assessment under this section, they must be provided within 30 days of the date of the assessment.

C. Communication Plan

1. Within 30 days of an *Intake Hearing Screening*, or Secondary Hearing Assessment, the DOC ADA Compliance Director, Facility ADA Coordinator, and hearing-impaired person will finalize a *Communication Plan* and document the plan in OMS.
2. The Communication Plan will identify the auxiliary aids and services entitled to the person for effective communication in the following situations.
 - a. Critical interaction;
 - b. Disciplinary matters, including investigations and proceedings;
 - c. Interviews with Corrections Investigations Unit or other investigators;
 - d. Interview or proceeding related to protective custody or administrative segregation
 - e. Meetings with DOC staff or contractors to discuss auxiliary aids and services;
 - f. Pre-release meetings and programs, including pre-release parole hearings;

- g. Grievance interviews and processes;
 - h. Educational programs and testing that include a verbal or auditory component;
 - i. Vocational programs that include a verbal or auditory component;
 - j. Risk Interventions services that include a verbal or auditory component;
 - k. Religious Services;
 - l. Medical and mental health care services, including dental, vision, audiological, individual and group therapy (unless medical care and appointment is routine and does not involve substantial conversation)
 - m. Medical care that is routine and does not involve substantial conversation (e.g., routine blood work or tests, regular allergy shots);
 - n. Daily environments such as recreation, meals, the library, facility job responsibilities, and basic communications, including conversations with facility staff.
3. Primary consideration shall be given to the expressed choice of the incarcerated individual in determining the appropriate auxiliary aids and services to ensure effective communication.
 4. Deviation from the primary expressed choice of the incarcerated person is allowable only when it can be demonstrated that another equally effective means of communication is available, or that the use or means of accommodation requested would result in a fundamental alteration of if the service or activity, or an undue burden to DOC.
 - a. A determination of “undue burden” must be made by the Central Office ADA Compliance Director with review by DOC General Counsel.
 - b. In the case of a finding of “undue burden,” DOC has an obligation to provide an alternative aid or services that provides effective communication. The ADA Facility Coordinator will assist in determining whether such an alternative exists.
 - c. If an alternate means of communication is offered, the Facility ADA Coordinator will document the decision in the Communication Plan demonstrating that it is equally effective as the expressed choice of the incarcerated person.
 5. All auxiliary aids and services identified in the Communication Plan will be provided in a timely manner and for the entire duration of the programs, services, and activities addressed in the Communication Plan.
 6. The Facility ADA Coordinator will assess the effectiveness and availability of communication accommodations offered to incarcerated individuals at the facility a minimum of every 6 months by communicating with the incarcerated individual.
 - a. The assessments will continue until the service or accommodation is terminated, either by request of the inmate or discharge of the individual from the facility.
 - b. The assessment and results will be documented in the *Communication Plan* in OMS.
 - c. Notice will be sent to the Facility ADA Coordinator and ADA Compliance Director when an assessment is overdue.
 7. An incarcerated person with a hearing disability may supplement or modify the information contained on their Communication Plan, upon request, at any time during their incarceration even if the person had previously declined service.

8. In accordance with established DOC policy on ADA accommodations, the Facility ADA Coordinator will ensure that all facility and medical staff having contact with an incarcerated individual with a hearing disability have access to the Communication Plan.
9. All changes must be documented in the Communication Plan. The most current version of the Communication Plan supersedes any previous version.

D. Unanticipated Interactions

1. In the event an unanticipated interaction or condition arises that is not addressed in the Communication Plan, staff will consider the need to provide auxiliary aids and services broadly and use the most appropriate auxiliary aid or service that is comparable to similar interactions documented in the Communication Plan.
2. In an emergency involving an imminent threat to the safety or welfare of an individual, or when the security of the facility is at risk, the services and resources readily available at that time will be used to communicate with an incarcerated individual with a hearing disability.
3. If an incarcerated individual with a hearing disability expresses or demonstrates a medical condition that cannot wait for the availability of a qualified interpreter or service, or staff suspect a person may be experiencing a medical emergency requiring treatment, staff will respond by providing the person with the same medical care, treatment, evaluation, or service that would be provided to an incarcerated person without a hearing disability under similar circumstances.
 - a. Staff will use the most effective means of communication available to them at the time.
 - b. An interpreter or other auxiliary aids or services will be made available to the person as soon as possible, but within no more than 2 hours.
4. When a qualified interpreter is necessary to ensure effective communication, the activity, service, or program may be delayed until the interpreter is made available or within 4 hours, whichever is earlier, or the incarcerated individual may elect to delay participation in the activity, service, or program until the interpreter is available, except in situations or circumstances involving an emergency.
5. Unless an interpreter is scheduled in advance (e.g., for an upcoming disciplinary hearing or a scheduled medical appointment), the qualified interpreter will be provided at the earliest reasonable time, and in all events no later than 4 hours from the time an incarcerated person with hearing disabilities requests an interpreter, taking into consideration, without limitation, the time of day, day of the week, distance to be traveled, and the circumstances and location at which the service is to be provided. The incarcerated individual will not be required to attend the event without a qualified interpreter except in situations involving an emergency. However, the event (if it is specific to the individual) may be rescheduled until an interpreter can participate, but no later than 24 hours from the scheduled event, absent exigent circumstances.
6. Staff will use the most effective, readily available means of communicating with the

incarcerated individual until such time as a qualified interpreter is present. VDOC will inform the incarcerated person of the current status of efforts being taken to secure a qualified interpreter on the inmate's behalf within 30 minutes of VDOC making the request for the interpreter service. VDOC will provide additional updates to the inmate, as necessary, until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not obviate VDOC's obligation to provide qualified interpreters in a timely manner.

E. Auxiliary Aids and Services

1. In determining what type of auxiliary aid and service is necessary to accommodate the communication needs of an incarcerated person with a hearing impairment, DOC will give primary consideration to the requests of the offender with the disability, unless it would result in an undue burden (see C(4) above). The following accommodations may be provided but is not intended to be an exhaustive list. Each request received or need identified will be documented in the *Communication Plan* and considered on a case-by-case basis.
 - a. Qualified interpreters available on-site or via video remote interpreting (VRI).
 - b. Text Telephone/Teletype Terminal Teletypewriter (TTY).
 - c. A telephone with volume control will be available on each housing unit where an inmate with a hearing or speech disability resides.
 - d. Videophones and services.
 - e. Telecommunications Relay Service (TRS).
 - f. Captioned telephone (Captel).
 - g. Over-the-Ear Headphones.
 - h. Closed captioning.
 - i. Written Materials.
2. All incarcerated individuals with a hearing disability will have three times the amount of time as an incarcerated person without a hearing disability for telephone calls to account for the time required to complete a telephone call using auxiliary aids or services, such as TTY, Captel.
3. All auxiliary aids provided to an incarcerated individual must be documented according to the DOC policy on Property.
4. Appropriate types of hearing aids and cochlear devices will be provided to an incarcerated individual at no cost to a person who has been prescribed such devices.
 - a. Standard hearing aids and cochlear processor devices will be provided as soon as reasonably possible but not later than 30 days after the incarcerated individual's prescription is submitted.
 - b. Standard replacement batteries will be provided, upon request, as soon as reasonably possible, but not later than 24 hours after a request is submitted and no later than 48 hours on weekends and holidays.

- c. Nonstandard replacement batteries will be ordered as soon as reasonably possible, but not later than 24 hours after a request is submitted and no later than 48 hours on weekends and holidays.
 - d. When an incarcerated person's hearing aid, cochlear processor, or other such device is inoperable or malfunctioning, medical staff will send the device to an appropriate repair company as soon as possible, but not later than 24 hours (or up to 48 hours on weekends and holidays) after a medical request is submitted. A temporary hearing aid will be provided for use during the time that the original hearing aid is out for repairs. Upon request, medical staff will inform the incarcerated individual when the device was sent for repair and when it is expected to be returned by the repair company. Upon request, medical staff will provide the incarcerated individual with any written documentation provided by the repair company regarding the vendor used, the date of the repair, and the specific repairs performed.
 - e. If the incarcerated individual's hearing loss warrants clinical reassessment, or the incarcerated individual requests reassessment to determine if the prescription for the hearing aid or other device needs to be adjusted before any repair or replacement is ordered, the incarcerated individual will be allowed to retain the original device (if functional), and medical staff will schedule a medical appointment as soon as reasonably possible.
 - f. Medical staff will document the date any device is sent out for repairs in the individual's medical file and inform the facility ADA Coordinator, who in turn will document in OMS.
5. Staff will attempt to resolve complaints about malfunctioning equipment within one week from receiving a complaint and no later than one month after receiving the complaint.

F. General Facility

- 1. Staff will ensure that all incarcerated individuals with hearing disabilities do not miss announcements, fire alarms, mealtimes, recreation, education, work assignments, or other auditory information provided to incarcerated people without a hearing impairment.
 - a. Visual alerts or other suitable notification systems or protocols must be utilized in areas where incarcerated individuals with hearing disabilities are present.
 - b. Alerts may include in-person notification, flashing lights, postings of daily schedules and announcements, and other effective means of notifying those with hearing disabilities of normal and customary announcements.
- 2. An incarcerated individual with a hearing disability may be provided a personal pager, that includes visual as well as vibrating functions to supplement any alerts, notifications or protocols put into place to ensure they receive normal and customary announcements.
 - a. If the individual declines the use of a personal pager, the decision shall be documented in the Communication Plan in OMS.

- b. Staff will be trained on the use of the pagers and responsible for transmitting messages and alerts at the same time messages and alerts are broadcast to incarcerated people without a hearing disability.
3. Unless a legitimate security or safety concern is present (which must be documented in an incident report), staff will ensure incarcerated individuals with a hearing disability are handcuffed or restrained in a manner that permits effective communication, for instance:
 - a. Handcuffing in the front to allow the person to sign, and;
 - b. Allowing one hand to be free to allow for writing.
4. Incarcerated individuals with a hearing disability will have the same access to captioned television programming, as incarcerated people of the same security classification level and status have to television.
5. Incarcerated individuals with a hearing disability will have equal access to common areas of the facility accessible to the general population.
6. DOC will not use another incarcerated person to interpret for an individual who has a hearing disability unless
 - a. the individual with a disability specifically requests such assistance from another inmate, the inmate agrees, and reliance on that incarcerated person is appropriate under the circumstances; or
 - b. in an emergency involving an imminent threat to the safety or welfare of the individual or the public where there is no interpreter available.
7. Except for DOC personnel hired specifically to serve as qualified sign language interpreters, DOC will not use its personnel to serve as sign language interpreters except in appropriate circumstances, such as: informal communications, providing basic information to an inmate with a hearing disability while waiting for a qualified interpreter to arrive, or in an emergency involving an imminent threat to the safety or welfare of the individual or the public where there is no qualified interpreter available.
8. Staff will provide incarcerated individuals with a hearing disability the written materials it provides to all incarcerated individuals, and effectively communicate the contents of such written materials, including the Inmate Handbook. This may require a Qualified Interpreter to ensure the individual understands the contents of the written materials.

G. Intra-Facility Transfer and Community Supervision

1. Every person who transfers between facilities will receive the same auxiliary aids and services at the receiving facility as were provided at the sending facility.
2. PPO/Field staff will update the Communication Plan to reflect the community supervision environment for any formerly incarcerated individual with a hearing disability.
3. After an initial request is made by either the formerly incarcerated person or by Parole and Probation staff, a Qualified Interpreter or auxiliary aids and services will be provided for all meetings involving significant or critical interactions.

4. VDOC will give primary consideration to the request by the hearing-impaired person for the auxiliary aids and services they require.