

Interacting with Law Enforcement

Law enforcement officers are the men and women in uniform that enforce our system of laws. Local law enforcement officers include police officers and deputy sheriffs. Situations involving law enforcement officers are often stressful, but they may be even more stressful if a person with a disability is involved. Why? Encounters with officers can be very stressful for people with disabilities, especially if the officer has not had training or experience with working with persons with disabilities, or the person with a disability struggles to communicate with the officer.

Did you know? Studies have shown that 50-80% of a law enforcement officer's encounters are with a person with a disability.¹

In the document, you will learn how:

- Laws protect people with disabilities from discrimination by law enforcement officers
- Interactions between people with disabilities and officers may be improved
- To report violations of your rights by officers

Laws that Protect the Rights of People with Disabilities

The Americans with Disabilities Act (ADA)² is a federal law that states that people with disabilities are to be treated the same as people without disabilities. The ADA has five sections (called "titles") that protect people with disabilities in different settings:

- Title One: Employment
- Title Two: State and Local Government
- Title Three: Public Accommodations
- Title Four: Miscellaneous Section
- Title Five: Communication (such as relay telecommunications access)

Law enforcement officers are employees of the public and are paid with your tax dollars. Therefore, Title II is the part of the ADA that protects your rights during encounters with police, sheriffs, and other law enforcement officers. These rights will be discussed later in this document.

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Section 504 of the Rehabilitation Act of 1973 (the Rehab Act)³ is another federal law that states that persons with disabilities are to be treated the same as persons without disabilities. Your rights under the Rehab Act are the same as those under the ADA.

So why are there two different laws? The Rehab Act was passed first, and it only protected your rights in programs and services that are funded with federal money. Twenty years later, the ADA was passed. The ADA expanded the rights of people with disabilities beyond what was covered in the Rehab Act. One of these expansions included your rights with respect to programs and services paid for with state or private money.

Sometimes, a program is funded with state and federal money at the same time. This is true for most law enforcement. When a program or service is funded with state and federal money, your rights are protected by the ADA and the Rehab Act at the same time. Because your rights are the same under both laws, this document will not discuss these laws separately. When reference is made to the ADA, remember that your rights are the same under the Rehab Act.

Your Rights

As a person with a disability, you have the right to the same treatment as people without disabilities. The regulations under the ADA also specifically say that officers and their headquarters must change policies, practices, or procedures when needed to prevent unequal treatment of you because of your disability.⁴

Practically speaking, this means that law enforcement must change the way they “normally” do things to make sure that they are not making things harder for you because of your disability. Here are some examples of how officers should change their routines:

- The officer comes up to your car and notices that you have a “handicap” license plate or that you drive with a hand control. The officer should expect that you might reach for a walker, cane, or other mobility device before you get out of the car.
- The officer thinks you might be drunk or using drugs. You have told the officer that you have a neurological impairment that causes you to seem drunk. The officer should test you with a breathalyzer. You probably cannot walk in a straight line, and asking you to do so may lead to your wrongful arrest.
- You are a person with low vision or are blind. The officer should read you any papers that he wants you to sign. The officer should also describe any procedures in advance to help you understand what is happening and what you are being asked to do.

- You are a diabetic. There is a set food schedule for the jail. The schedule should be changed as needed for you to regulate your sugar levels.
- You are deaf. The handcuffing procedure is to handcuff people behind their back. The officer should handcuff you in front to allow you to sign and write notes.
- You take medication for your epilepsy, diabetes, or other condition. When you are jailed, your medicine should not be confiscated like it is when people without disabilities are arrested.
- You are a person with an intellectual disability. The officer must still give you a Miranda warning (“You have the right to remain silent,” etc.). The officer should use simple language to explain your rights. The officer should also ask questions to make sure you understand – like asking if you know what a lawyer is. The officer may want to use pictures.⁵

Your Right to an Interpreter if You are Deaf or Hard of Hearing

If you are deaf or hard of hearing, you may have trouble communicating with officers. The ADA regulations say that the officer should allow you to tell them how you communicate best.⁶ Many people will probably say sign language. However, the ADA does not say that a sign language interpreter must be provided in every situation. The ADA only says that the officer must communicate with you in a way that you understand what is being said.

If you are deaf or hard of hearing, these are some ways that a non-signing officer may use to communicate with you:

- A TDD (Telecommunication Device for the Deaf)
- Orally with gestures and visual aids
- Written notes⁷

However, there are times when an officer may be required to provide a sign language interpreter. The officer must think about:

- What the officer will be talking about;
- The number of people involved in the conversation; and
- The importance of what you will talk about.⁸

Generally, if an officer wants to talk to you for a long time, or you will be talking about something complicated or important, an interpreter must be provided for you.⁹ Many good officers will request an interpreter on their own, but you should ask for one in writing if you need an interpreter.

Here are examples of when you do and do not have the right to an interpreter:

- A routine traffic stop: you do not have the right to an interpreter. Written notes should be enough to tell you how fast you were going or what you did wrong.

- Police questioning about a crime they think you committed: you have the right to an interpreter.¹⁰

There is also a North Carolina state law that says you have the right to an interpreter. The law says that if you have been arrested for a State crime, you cannot be interrogated, read your rights, arraigned, have a bail hearing, or go through any other preliminary proceedings until you have been provided with an interpreter.¹¹ If you are a person who is deaf or hard of hearing and are involved with the criminal justice system, **consult with an attorney about your rights.**

How to Communicate with Officers

Tell the Officer that You Have a Disability Right Away. All officers should have some training on how to interact with people with disabilities. If you tell an officer that you have a disability, a good officer will use his training to adjust how he expects you to behave in the situation. Get to this place of understanding right away by telling the officer about your disability.

What could happen if you do not tell the officer about your disability? Here are some examples:

- An officer approaches your car and asks you to step out of the vehicle. You have mobility impairment, so you reach behind the seat to get your walker or cane. Reaching behind your seat may make the officer think that you are reaching for a gun or are covering up illegal activity.
- An officer yells for you to “freeze.” You are a person who is deaf. You cannot hear the officer and continue to move away. Similarly, you are a person with low vision or you are blind and you are ordered to get over “there.” You have no idea where the officer is pointing. In these situations, the officer may mistakenly believe that you are resisting arrest, being uncooperative, or are fleeing from the scene.
- Your car has only one working headlight. You are pulled over by an officer. When you give the officer your registration, they notice that your hand is trembling. He also notices that your speech is slurred. The officer assumes that you are drunk and arrests you. The officer is wrong. You are actually a person with a neurological impairment that causes these symptoms.
- You have autism. As a result of your disability, you are uncomfortable making eye contact and do not like to be touched. An officer sees these actions as being “suspicious.” The officer might start aggressively questioning you or even arrest you. The officer has no idea that these behaviors are caused by your disability.¹²

The police expect you to be a little nervous around them. However, the police have also been trained to notice when people are overly nervous or not nervous enough. Your disability could cause you to seem suspicious. You can prevent this from happening. Tell the officer about your disability immediately. A good officer will understand that you may behave differently than expected in the situation. If the officer does not understand your particular disability, you may suggest that she contact a supervisor, ADA compliance officer, or other community health professional for advice.

Tell the Jailer that You Have a Disability Right Away. If you have been arrested or charged with a crime, you may now be in jail. Make sure that your arresting officer or the jailer knows about your disability. The officer or jailer should ask about any special needs you have because of your disability. If you are not asked, tell the officer or jailer what your special needs are.

People with developmental disabilities are especially vulnerable in jail. If the jailer has been told about the developmental disability, these persons may be separated from other inmates for their protection or to provide a more calming environment.

Carry a Pocket-Sized Card with Information About your Disability. You or a family member can make a small card that explains your disability. Include contact information for your family or friends on the card, especially if they are needed to talk to the officer for you. The North Carolina Division of Services for the Deaf or Hard of Hearing offers free, pre-made cards for people who are deaf, hard of hearing, or deaf-blind.

The contact person on the card can be the officer's best resource. The contact person can tell the officer how to help you calm down, and can come to the scene to help you and the officer communicate. These cards are very useful when talking to people with developmental disabilities.¹³ Some advantages of these cards are:

- They can be used even when a person does not or cannot talk.
- They help officers understand that you have a disability. Officers are more likely to accept that you have a disability when you are carrying one of these cards.
- It helps you prove that you told the officer about your disability if proof is needed later.

Contact Your Local Law Enforcement Office about ADA Training for Officers. The ADA affects all parts of an officer's job, including: receiving citizen complaints; interrogating witnesses; arresting, booking, and holding suspects; operating emergency call centers; providing emergency medical services; enforcing laws; and other duties.¹⁴

You can find out what kind of ADA training is available for officers by contacting your local police department or sheriff's office. Ask whether officers get any specific training on working with people with disabilities. You can also ask what types of disabilities are included in the training. If a training program does not exist or if a particular disability is not included in the training, you can ask that the training be created or expanded. You may

also contact the North Carolina Division of Services for the Deaf and Hard of Hearing. They can provide some disability-related training to law enforcement.

Any time that you ask for information about officer training or suggest that they begin a type of training, keep a record. You may need this information later.

Reporting Mistreatment by Law Enforcement

If you think that your rights were violated because of your disability, you may file a complaint by calling or going to the headquarters of the officer you believe violated your rights. An officer at the headquarters should tell you how you can file your complaint. Typically, complaints can be filed over the phone or by filling out a form. Sometimes, you may be able to file a complaint anonymously.

If you have decided to file a complaint against an officer, try having the following information ready:

- The officer's name
- The officer's vehicle number if possible
- A description of what the officer looked like
- The name and contact information for anyone else who saw what happened
- Where the event took place
- Date and time it happened

If you and the officer have had a bad experience with one another, do not question the officer for his badge and vehicle number. This may make the situation worse. Later, when you are describing what happened to you in the complaint against the officer, do not call the officer names. Try to write the complaint like you are a newspaper reporter – just report the facts and do not give your personal opinion.

Reporting Officers to the Department of Justice

You may also report mistreatment by an officer to the U.S. Department of Justice (the DOJ). The DOJ enforces Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. You can file an ADA complaint alleging disability discrimination against a State or local government by mail or e-mail. To learn more about filing an ADA complaint, visit www.ada.gov/filing_complaint.htm.

To file an ADA complaint, fill out this form fax it to (202) 307-1197 or mail the form to:

US Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530

You may also file a complaint by e-mail at ADA.complaint@usdoj.gov.

If you have questions about filing an ADA complaint, please call 800-514-0301 (voice) or 800-514-0383 (TTY).

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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www.disabilityrightsncc.org

919-856-2195
877-235-4210 (toll free)
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¹ See David V. Whalen, *et al.*, *Disability Awareness Training: A Train the Trainer Program for First Responders* (2011), available at <http://www.ndss.org/Global/Law%20Enforcement%20Disability%20Awareness%20Training.pdf>.

² 42 U.S.C. § 12101, *et seq.* (2012).

³ 29 U.S.C. § 794a (2012).

⁴ 28 C.F.R. § 35.130(b)(7) (2010).

⁵ See Disability Rights Section, U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* (2006), available at http://www.ada.gov/qanda_law.pdf [hereinafter *Commonly Asked Questions*].

⁶ 28 C.F.R. § 35.160 (2010).

⁷ See Disability Rights Section, U.S. Dep't of Justice, *Model Policy for Law Enforcement on Communicating with People who are Deaf or Hard of Hearing* (2006), available at <http://www.ada.gov/lawenfomodpolicy.pdf> [hereinafter *Model Policy*].

⁸ 28 C.F.R. § 35, App. A, Subpart E – Communications (2010); *see also* § 35.160.

⁹ *Id.*

¹⁰ See *Commonly Asked Questions*, *supra* note 5.

¹¹ Interpreters for Deaf Persons, N.C. Gen. Stat. § 8B-2(d) (1981).

¹² See *Commonly Asked Questions*, *supra* note 5; *see also* Dennis Debbaudt, *Disclosing to the Authorities*, in *COMING OUT ASPERGER: DIAGNOSIS, DISCLOSURE, AND SELF-CONFIDENCE* 258 (Dinah Murray ed., 2006).

¹³ See Nat'l Law Enforcement Policy Ctr., Int'l Ass'n of Chiefs of Police, *Law Enforcement Encounters with Persons who are Developmentally Disabled* 3 (2004), available at <http://www.readbag.com/cforjustice-wp-content/uploads-2008-08-encounters-w-persons-dev-disabled-paper>.

¹⁴ See *Commonly Asked Questions*, *supra* note 5.