

	<b>DEPARTMENT OF PUBLIC SAFETY</b> <b>DEPARTMENT ADMINISTRATION</b> <b>POLICY AND PROCEDURES</b>	<b>EFFECTIVE DATE:</b> <b>April 23, 2020</b>	<b>POLICY NO.:</b> <b>COR.14.30</b>
		<b>SUPERSEDES (Policy No. &amp; Date):</b> <b>NEW</b>	
<b>SUBJECT:</b> <b>COMMUNICATION ACCESS</b>		<b>Page 1 of 11</b>	

## 1.0 PURPOSE

To establish clear guidelines to ensure effective communication during programs and services, provided by this Department to individuals with disabilities.

## 2.0 SCOPE

This policy applies to all correctional facilities, PSD staff, contractors and volunteers. To the extent any individual facility's policy conflicts with the statewide policy, COR.14.30 shall control.

## 3.0 REFERENCES AND DEFINITIONS

### .1 References

- a. 29 U.S.C. §701 et seq., *Rehabilitation Act of 1973*, Section 504.
- b. Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134.
- c. 28 CFR Part 35, *Americans with Disabilities Act of 1990*, Title II Regulations, Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services.
- d. HRS Chapter 489, Discrimination in Public Accommodations.
- e. HRS § 347-2.5 and -13, Blind, Visually Handicapped, and Other Disabled Persons.
- f. Governor's Administrative Directive, No.12-06, Accessibility to State Government by Persons with Disabilities, December 18, 2012.
- g. Department of Public Safety (PSD), Policy & Procedures (P & P), COR.01.14, Corrections Mission and Goal.
- h. PSD, P & P, COR.08.02, Searches of Visitors and Staff (Confidential).
- i. PSD, P & P, COR12.03, Inmate Grievance Program.
- j. PSD, P & P, COR.14.27, Inmates with Disabilities.

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<p style="text-align: center;">PSD P &amp; PM</p>	<p><b>SUBJECT:</b></p> <p><b>COMMUNICATION ACCESS</b></p>	<p><b>POLICY NO.:</b> <b>COR.14.30</b></p>
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- k. PSD, P & P, COR.15.06, Non-Discrimination and Accessibility for Visitors/Guests.
- l. PSD, P & P, ADM.08.08, Prison Rape Elimination Act (PREA).

**.2 Definitions**

- a. **Assistive Technology Device or Service:** is any equipment, product or services that allows individuals with disabilities equal access to information, programs and services.
- b. **Augmentative Communication:** Communication methods used to supplement or replace speech or writing for those with disabilities in the production or comprehension of spoken or written language.
- c. **Auxiliary aids and services:** Aids, devices or services that enables an inmate with a disability to have equal access to programs and services. Includes, but is not limited to, qualified interpreters on-site or through video remote interpreting (VRI) services, note takers, real-time computer-aided transcription (CART) services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices and systems, telephone compatible with hearing aids, closed caption decoders, open and closed captioning, including real-time captioning, voice, text, and video-based telecommunications products and systems, including text telephones (TTY), videophones, and captioned telephones, qualified readers, taped texts, audio recordings, Braille materials and displays, screen reader software, magnification software, optical readers, large print materials, and other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.
- d. **Braille:** A system of reading and writing created for individuals who are blind. The basic unit of Braille is a Braille cell, composed of six (6) raised dots. From these six dots, letters, numbers, punctuation marks, and contractions are formed.
- e. **Captioning:** The process of converting audio content of a broadcast, live event or video into text and displaying text on the screen or monitor. Captions include words, sound effects and descriptions.

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- f. **Computer-aided Real-Time Transcription (CART):** The instant word for word transcription of the spoken word into English text using a stenotype machine, notebook computer and real-time software.
- g. **Computer Assisted Notetaking (CAN):** A typist, using a laptop computer, provides a summary of a speaker's words or notes to people who are deaf, hard of hearing or deaf-blind who do not use sign language.
- h. **Communication Disability:** Any speech or language disability that may affect an individual's ability to share, exchange and/or receive information effectively and may include hearing, vision, speech, physical and/or cognitive disabilities.
- i. **Effective Communication:** Communication with persons with 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 services, programs, or activities.
- j. **Primary Consideration:** A request for accommodation or auxiliary aid or service (e.g. specific interpreter, method of communication) must be honored unless it can be determined that another equally effective means of communication is available or that using the means chosen would result in a fundamental alteration in the service, program, or activity or is an undue financial or administrative burden.
- k. **Qualified Interpreter:** An interpreter who, via video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any specialized vocabulary, given the deaf or hard of hearing inmate's language, skills, and education. Qualified interpreters shall be on the list published by the State of Hawaii, Disability and Communication Access Board (DCAB).
- l. **Sign Language:** A natural language that serves as the predominant language of deaf communities, with American Sign Language (ASL) as the predominant language used in the United States and Canada.
- m. **Telecommunication Relay Service (TRS):** An operator service that allows an inmate with hearing disabilities to place calls to standard telephone users via keyboard or assistive device.

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- n. Text Telephone/Teletype Terminal/Teletypewriter (TTY): A device that allows individuals with hearing disabilities to use a telephone to type and send text messages. This is a direct person to person call. There is no interpreter.
- o. Video Call: A phone call using an internet connection which uses video to transmit live pictures between individuals (e.g. Skype, FaceTime, Alexa).
- p. Video Relay Service (VRS): A form of telecommunication relay service (TRS) that enables individuals with hearing disabilities to use sign language to place a telephone call through video technology. The conversation is interpreted in both American Sign Language and Spoken English.
- q. Video Remote Interpreting (VRI): An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high quality video images. VRI can provide immediate, effective access to interpreting services 24/7.

#### **4.0 POLICY**

- .1 PSD staff, contractors and volunteers shall follow all applicable non-discrimination federal and state laws, regulations, polices, and Executive Orders.
- .2 In accordance with 28 CFR Part 35, Americans with Disabilities Act of 1990, the Department will take steps to ensure effective communication during all programs and services provided to individuals with communication disabilities.
- .3 Accommodations may be made in the form of auxiliary aids and services that promote effective communication access.
- .4 In accordance with 28 CFR Part 35, Americans with Disabilities Act of 1990, modifications to policies and procedures may be made in a manner that permits effective communication (e.g. hand-cuffing inmates in the front so that they can sign, having one hand free in order to write) unless a direct threat or legitimate safety requirement exists.
- .6 The Department is not required to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden. In those circumstances where personnel believe that the proposed action would be a fundamental alteration or undue financial and

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administrative burden, the Department has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the Department or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written response to the request of the reasons for reaching that conclusion. If an action required to comply would result in such an alteration or such burdens, the Department shall take any other possible action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Department.

- .7 The Department may not charge individuals with disabilities for the cost of providing effective communication.
- .8 Auxiliary services shall be provided by qualified individuals as reported by the Hawaii Disability and Communication Access Board (DCAB).
- .9 The Department may not require an individual or inmate, who has a hearing disability to bring another individual or inmate to interpret for him or her. The Department will not use an inmate to interpret for an individual who has a hearing disability unless;
  - a. the individual with a hearing disability specifically requests such assistance from another inmate, the inmate agrees, and reliance on that inmate is appropriate under the circumstances (e.g., companion or other inmate does not have a personal stake in the outcome of the situation and does not have a conflict of interest); or
  - b. an emergency exists involving an imminent threat to the safety or welfare of staff, individuals, the inmate, or the public where there is no qualified interpreter available.
- .10 The Department shall not use personnel to serve as sign language interpreters, unless;
  - a. hired specifically to provide services as a qualified sign language interpreter; or
  - b. an emergency exists involving imminent threat to the safety or welfare of an individual, the inmate, or the public where there is no interpreter available.

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.11 The Department shall provide appropriate auxiliary aids and services, including qualified interpreters, to ensure effective communication with inmates who have communication disabilities. The following non-exhaustive list provides examples of activities, services, programs, or circumstances requiring equal access communication accommodations.

- Critical communication, complex information, lengthy exchanges, or anything involving legal due process;
- Intake and orientation;
- Health services (medical, dental, mental health);
- Treatment and psychological services;
- Educational and vocational programming;
- Due process hearings, including disciplinary hearings, and hearings in which the inmate is a witness;
- Classification actions, review interviews, and assessments;
- Grievance interviews or processes;
- Religious services;
- Non-criminal investigations;
- Parole Board hearings, and
- Pre-release instructions.

.12 Inmates who have a hearing disability will have equal access to captioned television programming as other inmates in the same classification level have to television programming.

## **5.0 PROCEDURES**

- .1 All requests for auxiliary aids or services shall be referred to the Facility ADA Coordinator upon receipt.
- .2 For inmates with disabilities, procedures outlined in PSD, P & P, COR.14.27, Inmates with Disabilities: Non-Discrimination shall be followed.
- .3 For visitors/guests, procedures outlined in PSD, P & P, COR.15.06, Non-Discrimination and Accessibility for Visitors/Guests shall be followed.
- .4 The Facility ADA Coordinator, Warden, Program Administrator, and/or designee shall arrange for auxiliary services with a referral agency and/or directly with a qualified interpreter for the services requested.

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- .5 The Department shall notify the referral agency and/or qualified interpreter that clothing must be neat, clean and appropriate for the environment.
- .6 The Department shall notify the referral agency and/or qualified interpreter that they shall be subject to search in accordance with PSD, P & P, COR.08.02, Searches of Visitors and Staff. Failure to comply with a search shall result in their not being allowed to enter the facility.
- .7 The Department shall notify the referral agency and/or qualified interpreter that failure to conduct themselves in a professional and respectful manner shall result in their visit being terminated.
- .8 The Department shall notify the referral agency and/or qualified interpreter of their obligation to comply with PSD, P & P, ADM.08.08, Prison Rape elimination Act (PREA), provide a copy of this policy and have the referral agency and/or qualified interpreter sign acknowledgement of receipt and understanding prior to entering any correctional facility or having contact with any inmate.
- .8 The Facility and/or program shall be responsible for all costs associated with providing auxiliary aids and services. Costs shall not be passed onto the inmate or visitor/guest.
- .9 Auxiliary Aids and Services  
  
 In accordance with 28 CFR Part 35, Americans with Disabilities Act of 1990, the Department shall make appropriate auxiliary aids and services available to individuals with disabilities to ensure effective communication.
  - a. Inmates with disabilities may request auxiliary aids and services by submitting form PSD 8773, Request for Accommodation/Modification. Refer to PSD, P & P, COR.14.27, Inmates with Disabilities: Non-Discrimination.
  - b. Visitors/guests with disabilities may request auxiliary aids and services for any event, program or service that members of the public are normally allowed to attend.
  - c. Visitors/guests requiring auxiliary aids and services should contact the Facility ADA Coordinator and/or designee as soon as possible upon knowing of their visit. To prevent delay, it is recommended that individuals with disabilities submit such requests no later than five (5) business days

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(Monday through Friday) before their scheduled visit or event. Refer to PSD, P & P, COR.15.06, Non-Discrimination and Accessibility for Visitors/Guests.

- d. Staff shall make reasonable efforts to accommodate visitors/guests who do not notify the facility within this timeframe.
- e. All efforts shall be made to communicate in an area with reduced area noise and distractions and is well lit.
- f. Types of auxiliary aids and services for people who are deaf, hard of hearing, or deaf-blind, include, but are not limited to;
  - Qualified interpreters
  - Note takers or computer-assisted note takers (e.g. CAN, CART)
  - Written materials or graphics
  - Real-time captioners or video text displays
  - Amplified and hearing aid compatible telephones
  - Captioning
  - Assistive listening devices
- g. Types of auxiliary aids and services for people who are blind or have low vision, include but are not limited to;
  - Print information on audio tape or CD, Braille, large print, read allowed, or screen reader
  - Verbal descriptions of action or visual information
  - Staff serving as a reader or sighted-guide
- h. Types of auxiliary aids and services for people with cognitive disabilities, include but are not limited to;
  - readers
  - communication assistants
  - rewording of information to use clear and concise language or repetition
  - pictograms
  - graphic presentation of information

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- i. Types of auxiliary aids and services for people with speech disabilities, include but are not limited to;
  - written materials
  - more active and acute listening on the part of the listener
  - communication assistants who are familiar with the individual's speech pattern
  - note takers
  - typewriters or iPad or tablet with text to voice application (augmentative communication)
  
- j. Staff shall provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must give "primary consideration" to the choice expressed.
  
- k. Face-to-Face Communications
  - 1. For brief or simple face-to-face communication, basic aids are usually appropriate (ex. exchanging written notes).
  - 2. For complex or lengthy exchanges, like meetings, hearings, interviews, classes or counseling sessions, more advanced aids and services are necessary (ex. qualified interpreters, computer-aided real time transcription (CART), captioning, video relay, assistive listening devices, and computer terminals).
  
- l. Written Communications
  - 1. For individuals who are blind or have low vision or other disabilities, alternative formats are often effective ways of making information accessible (ex., Braille, large print, audio recordings, readers, emails or CDs).
  
- m. Video Remote Interpreting (VRI)
  - 1. May be used in situations requiring immediate response or action.
  - 2. Individuals using VRI must have adequate training of the technology so that they may quickly and efficiently set up and operate VRI.

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3. Must provide;

- a) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication.
- b) Sharply delineated images that are large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; and
- c) Clear, audible transmission of voices.

.10 Grievance Procedure

Inmates who believe they have been discriminated against shall be provided an opportunity to submit a grievance in accordance with the procedures outlined in PSD, P & P, COR.12.03, Inmate Grievance Program.

Visitors/guest who believe they have been discriminated against shall be provided an opportunity to submit a grievance in accordance with the procedures outlined in PSD, P & P, COR.15.06, Non-Discrimination and Accessibility for Visitors/Guests with Disabilities.

Any qualified individual with a communication disability may request an auxiliary aides and services and/or reasonable modification for an alternate method for submitting a grievance (ex. audio recording, transcription, interpreter).

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APPROVAL RECOMMENDED:

  
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Deputy Director for Corrections      April 23, 2020  
Date

APPROVED:

  
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Director      April 23, 2020  
Date

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