

# THURMONT POLICE DEPARTMENT

<b>GENERAL ORDER</b>	<i>Date Issued:</i> April 4, 2016	<i>Effective Date:</i> April 4, 2016	<i>Order No:</i> Chapter 2.19
<i>Authority:</i> Chief of Police Gregory L. Eyler		<i>Manual Page No:</i>	
<i>Subject:</i> <b>Americans with Disabilities Act (ADA)</b>			<i>Replaces Page No:</i>
<i>Accreditation Standard:</i> Chapter	<i>Distribution:</i> <b>ALL</b>	<i>Amends:</i>	<i>Number of Pages:</i> 6
<i>Related Documents:</i>		<i>Rescinds:</i> New Policy	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

## I. PURPOSE:

To provide members with direction as they respond to the needs of the disabled community, ensuring that all individuals with a disability, as defined by the "Americans with Disabilities Act" ("the ADA") (42 U.S.C. 12101, et seq., Public Laws 101-336 and 110-325) are afforded reasonable accommodations and services as provided by law. It is NOT the intent of this order to provide personnel with detailed medical information regarding every disability nor can this order address an officer's response to a disabled individual in every situation. This order is to be used as an overview to provide basic guidance and to advise personnel of the need to examine the Department's programs and procedures to ensure that they do not discriminate against a disabled individual.

## II. POLICY:

It is the policy of the Department to afford **ALL** people, including those with disabilities, the same level of police service and equal access to the programs, services, activities and employment opportunities offered by the Department. The Department is committed to offering "reasonable accommodations" to individuals with a disability, as defined by law. The Department recognizes that this commitment also extends to individuals who have been arrested by members of the Department.

**III. DISCUSSION:**

The goal of the ADA is to provide individuals with disabilities access to employment opportunities, programs, services, activities, and buildings available to the public that may have been inaccessible because of their physical limitations. Law enforcement officials should evaluate their agency's employment practices, the accessibility of their programs and activities and the ways in which they provide service to the community and to the disabled to ensure compliance with the ADA, its regulations and its guidelines, as most recently amended.

**IV. DEFINITIONS:**

**DISABILITY:** A mental or physical impairment that substantially limits a major life activity; a record of such an impairment; or being regarded as having such an impairment.

**FACILITY:** "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structures, or equipment is located.

**MAJOR LIFE ACTIVITY:** When used in reference to a disability, in general, a "major life activity" includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions in the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**REGARDED AS HAVING AN IMPAIRMENT:** When used in reference to a disability, an individual is "regarded as having an impairment" if the individual establishes that he or she has been subject to an action prohibited by the ADA because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. An individual with a "transitory" impairment is not regarded as having an impairment. A transitory impairment is an impairment with an actual or expected duration of six months or less.

**REASONABLE ACCOMMODATION:** A "reasonable accommodation" is defined by the factual circumstances and the reasonable accommodation that should be afforded to an individual depends on the context. A reasonable accommodation may include making existing facilities readily accessible to or usable by individuals with disabilities; may include making existing services, programs, or activities available to individuals with disabilities; and may include job restructuring, modified schedules, a change in the application process, work environment, or job descriptions or the use of modified or auxiliary devices that enable

a person with a disability to perform the essential functions of the job without causing an undue hardship or direct threat to the health and safety of them or others.

**UNDUE HARDSHIP:** Significant difficulty or expense relative to the size and overall financial resources of the Department.

**V. EXPLANATION OF A DISABILITY:**

- A. An individual has a disability under the law if he or she has a "*mental or physical impairment that substantially limits a major life activity*" or is regarded as having an impairment.
- B. An impairment may be a physiological disorder or condition, a cosmetic disfigurement, an anatomical loss, or a mental disorder such as mental retardation, mental illness or a learning disability that substantially limits a major life activity.
- C. *Current* drug usage is not protected under the ADA; however, an individual who has "successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully" AND is not engaging in the current, illegal use of drugs is protected.
- D. The ADA offers protections to individuals with a "permanent" condition. Persons who have a "temporary" condition, even though severe, such as a broken leg, are not afforded protection under ADA.

**VI. EMPLOYMENT ISSUES:**

- A. The Federal ADA regulations state in part, that "No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program or activity conducted by a public entity." The Department is committed to employment practices that adhere to the provisions of the ADA. The Department will not discriminate against disabled qualified individuals who are able to perform the essential functions of the job, with or without a reasonable accommodation.
- B. The ADA does not automatically guarantee a job for an individual with a disability, nor does it require preference or protection be given to an individual. Employers are entitled to hire the "most qualified" applicant who can perform the essential functions of that particular job. However, reasonable accommodations must be afforded throughout all stages of employment, including the application and interview processes.

**VII. ACCESS TO PUBLIC FACILITIES:**

As required by law, the Department has examined its facility and determined that it is in compliance with ADA accessibility guidelines and regulations. The Department must also ensure that any off-site location used by the Department to conduct any Departmental program, activity and/or service is also accessible to the disabled. Therefore, as a matter of Departmental policy, personnel who plan, schedule, conduct and/or promote programs or activities on behalf of the Department that are open to the public, are required to ensure that the site of the activity is accessible to the disabled. Accessibility may be achieved in a

variety of ways, depending on the circumstances, including reassignment of the program or activity to an accessible building, or holding the program or activity at alternative sites.

### **VIII. PROVIDING SERVICES TO THE DISABLED:**

All personnel will ensure that individuals with disabilities are afforded the same rights, privileges, and access to departmental programs and activities as provided to those without disabilities. Individuals with disabilities may have special needs that have to be met in order to provide the best possible police response; therefore all personnel need to be familiar with the basic techniques they may need to employ in order to provide support/ service to these individuals.

#### **A. Visual Disabilities:**

People who are blind or vision impaired may have difficulty identifying law enforcement officials. Responding officers need to be aware of this problem and take appropriate measures to establish their identity. Suggested responses are to have the dispatcher call the individual to announce the officer's presence or broadcast a radio transmission to the responding officer on the scene so the individual can verify their presence.

#### **B. Mental, Emotional and Psychological Disabilities:**

1. Providing accessibility to police services to these individuals may require not only general assistance or information to the individual or his family, but also may include care of the individual while in custody. Responding officers should attempt to ensure that these individuals receive assistance in obtaining information about available agency services.
2. Officers must remain familiar with established Federal, State and local laws dealing with emergency commitment procedures to assist those who cannot assist themselves and/or are a threat to themselves or others.

#### **C. Mental Impairments and Developmental Disabilities:**

Mental Impairments and Developmental Disabilities range from mild to profound. In all situations, the responding officer should ask short questions, be patient when waiting for answers, repeat questions and answers if necessary and provide reassurance. Officers may call upon the Mental Health Association of Frederick County, Inc. for assistance in referring clients to various agencies.

#### **D. Mobility Impairments:**

In a critical or emergency situation, personnel need to be aware of the safest and most rapid methods for assisting people with mobility impairments to avoid causing them unnecessary strain or injury.

#### **E. "Invisible" Disabilities:**

A number of disabilities are not readily apparent to the casual observer, such as epilepsy, diabetes, etc. The disability becomes apparent to others when an individual's outward behavior is affected. Police officers are not expected to diagnose an individual's medical condition. However, they have been trained to recognize that "strange or unusual" behavior may be symptomatic of a hidden medical condition. Understanding the

characteristics commonly associated with an “invisible” disability will lead to a successful outcome in these situations while an inaccurate assessment may lead to an unnecessary confrontation with the person, injury to the officer or the subject, and/or the failure to obtain needed medication and/or treatment for the individual.

F. Speech and Hearing Impairments and Disabilities:

Officers should be aware that an individual’s failure to comply with or respond to verbal orders may be the result of that individual’s inability to hear the officer or respond verbally. Officers should attempt to identify whether or not they are dealing with a person who has a communication-related disability.

**IX. THE ARREST/DETENTION/INCARCERATION OF DISABLED INDIVIDUALS:**

- A. Refer to General Order Chapter 11 entitled “Prisoner Transportation,” for additional information.
- B. In all custodial situations, the Department and the officer assume responsibility for the welfare and safety of an arrestee. Prisoners will be processed as expeditiously as possible.

**X. PARTICIPATION BY DISABLED INDIVIDUALS IN SERVICES, PROGRAMS AND ACTIVITIES:**

- A. The ADA provides all disabled individuals with the same opportunity to participate in any service, activity or program that is open to the public and to receive the benefits of a public entity’s services, programs, and activities. The law requires the sponsoring agency to provide a "reasonable accommodation" to meet the needs of the disabled participant and to advertise the fact that accommodations are available if requested by a disabled individual who wishes to participate in the service, program, or activity.
- B. Examples of services, programs and activities sponsored by the Department are the Ride-Along Program; Neighborhood Watch Programs; tours of headquarters, etc.
- C. Any requests for reasonable accommodations will be referred to the Deputy Chief of Police. If a request for an accommodation cannot be met because of “undue hardship” as defined by the ADA, or the accommodation “fundamentally alters the nature of the service, program or activity,” the Deputy Chief of Police will notify the Chief of Police who will make a determination concerning the service, activity or program.

**XI. COMPLAINTS REGARDING NON-COMPLIANCE WITH ADA:**

- A. The ADA requires that each public entity develop a “grievance” procedure to address any complaints alleging non-compliance with the requirements of ADA.
- B. Anyone within the Department may receive a complaint alleging that the Department is not complying with a particular requirement of the ADA. When a member receives a complaint, he or she will notify the supervisor who will document the complaint and forward it to the Chief of Police via chain of command.

- C. The Chief of Police will forward all complaints to the Board of Commissioners for the Town of Thurmont and the Town's attorney. The Chief of Police will also forward suggestions to remedy the oversight if the complaint is determined to be valid.

**XII. RETENTION OF RECORDS REGARDING ADA NON-COMPLIANCE:**

The administration of the Thurmont Police Department will be responsible for ensuring that records of all ADA non-compliance investigations are maintained, and the Chief of Police is provided with any requested information when directed.

**XIII. SUPERVISORY ASSISTANCE:**

Due to the various types of disabilities, there cannot be set procedures to cover every disability or reasonable accommodation. Officers will consult with their supervisor whenever they are unable to accommodate a disabled individual or encounter difficulty in accomplishing the accommodation. The chain of command will be notified when an incident occurs and will assist with providing a reasonable accommodation.

**DOCUMENT DATES:**

*Amended Date:*

*Review By: Leslie Powell, Powell-Flynn, LLP, 19 N. Court St. Suite 101, Frederick, Md. 21701  
Review Date: April 4, 2016*

*Review Date:*

*Rescinds:*

*Order Written By: Lt. P.A. Droneburg*

*Order Edited and Approved By: Chief Gregory L. Eyler*

*Accreditation Standards Included in this Order*

**CHAPTER**