

LEGAL BULLETIN NO. 17-1¹

SUBJECT: The Americans with Disabilities Act, Service Dogs, and Handling of Disabled Persons.

This Legal Bulletin addresses various issues confronting Department members encountering persons who are disabled, including, for example, persons who use wheelchairs or are deaf. Department members are cautioned to document all measures taken in dealing with and providing service to such persons.

QUESTION: What actions should officers take if dispatched to a call involving the owner of a business who refuses entry to a disabled person accompanied by a service dog? Is refusing entry to a person a crime? What about arresting the person for trespass at the business owner's request?

ANSWER: It is not a crime for a business to refuse entry to a disabled person accompanied by a service dog. On the other hand, officers should not become involved in forcibly removing an individual from a restaurant or other business *simply because* that individual is accompanied by a service dog.

DISCUSSION:

Occasionally officers are dispatched on calls where the issue involves a disabled individual wanting to take his or her service dog into a business and the business refuses to allow the dog to come inside. In these situations, the police are normally called and the citizen wants the police to force the owner to allow them entry into the business with their dog. Or, the owner or the manager of the business wants to file a trespassing charge against the citizen who refuses to leave once told they cannot come inside accompanied by their dog.

On June 1, 1999, the Missouri Court of Appeals for the Western District dealt with this issue. The Court held that under the Missouri Human Rights Act [MHRA] a disabled person has a right to be accompanied by a service dog inside a restaurant. This case did not involve the police but simply set the standard for use of service dogs. *Missouri Commission on Human Rights v. Red Dragon Restaurant, Inc.*, 991 S.W.2d 161 (Mo. App. W.D. 1999). The same right would apply to other public services and accommodations, such as government offices and hotels/motels.

¹ This document replaces rescinded Legal Bulletin 13-15 due to substantial changes in content.

There is also case law dealing with the Americans with Disabilities Act [ADA]² and interpreting the service dog provision from a Federal standpoint. For example, in one case an individual with a disability was asked to leave restaurant premises because she had a service dog with her. She sued the restaurant, police officers who were involved in the arrest and the Board of Police Commissioners of St. Louis, Missouri. The case was filed under the ADA and the MHRA. The Federal Court indicated that the Plaintiff did have a right to be accompanied by a service dog inside a restaurant. The Court found that police officers who asked customers to leave were not liable under the ADA barring discrimination by the owner or operator of a public facility (the restaurant) and the customer was not entitled to relief against members of the city's police board. *Pona v. Cecil Whitaker's, Inc.*, 155 F.3d 1034 (8th Cir. 1998).

Based upon the status of the law, officers should not become involved in forcibly removing an individual from a restaurant or other public business or government office simply because that individual is accompanied by a service dog. This should be the position of officers regardless of whether the owner or manager of the business wants to file a trespassing complaint. If there are other reasons for requesting the removal of the individual, such as disturbances by the person or even disturbances by the service dog, that is acceptable for filing a trespassing complaint. Simply having the dog in the restaurant or other public place is not a violation of law, and officers should not participate in trespass or other arrests in such circumstances.

QUESTION: When encountering members of the public who use a service dog, what general information about the ADA³ should Department members keep in mind?

ANSWER AND DISCUSSION:

In addition to the above, Department members should be mindful that occasionally the disability suffered by the person is not obvious. But the disability and need for using a service dog is real. Service dogs are used for many purposes, including by those who are blind or visually impaired, persons with mobility issues (pulling of wheelchairs, retrieving of items), persons who suffer epilepsy or other seizure disorders, and persons who are diabetic (especially diabetic children or those diagnosed with Type 1 diabetes).

² In 2011 the Department of Justice issued regulations clarifying that a 'service animal' for ADA purposes is limited to service dogs. A narrow exception, unlikely to be encountered by officers in Kansas City, exists in some instances for miniature horses.

³ The MHRA applies many of the same rules and regulations regarding disability and service dogs as does the ADA. The information described in this Legal Bulletin applies under both Missouri and Federal disability law.

More recently there is some debate about whether ‘therapy’ dogs are service animals under the ADA. Therapy dogs may accompany persons who suffer anxiety disorders and similar conditions. If told by an owner that a dog is a therapy dog, then it is recommended that Department members err on the side of caution and assume the dog is a service animal pursuant to the ADA.

Under the ADA, a service dog need not be marked with a particular collar, vest, leash, tag, etc. Nor is the owner required to possess a special permit or certificate identifying their animal as a service dog. General city licensing requirements applying to all dogs are applicable to service dogs, however.

Officers may ask a person about their disability or whether their animal is a service dog to better accommodate the person if needed, but under the ADA the person is under no legal obligation to answer or provide specifics.

QUESTION: What steps should Department members take to ensure disabled individuals are not injured and their disability is accommodated to the extent practicable? For example, a disabled person accompanied by a service dog, a person in a wheelchair, or an individual who is deaf or blind?

ANSWER AND DISCUSSION:

Department of Justice regulations suggest that standard transport practices may be dangerous for many people with disabilities. Members should use caution not to harm an individual who is being arrested and transported.

The same caution should be used when removing a person’s assistive device that is required for day-to-day living. Understand that removing a disabled person’s assistive device that is required for day-to-day living should be evaluated on a case-by-case basis. Generalized concerns about safety and security may not be legally sufficient and the specific circumstances applicable to that person, arrest, incident, environment, etc. should be considered. For example, if a person’s cane was used in the commission of an assault, the cane will be recovered as evidence. But a generalized concern about safety, with no basis in the particular facts of this instance, may not be legally sufficient to remove a cane when the cane is needed by the person to ambulate.

Suggestions regarding specific disabilities are provided below.

I. Wheelchairs and other mobility devices.

If a person uses a wheelchair, contact the Kansas City Area Transportation Authority [KCATA] for a cut-away lift van or bus. The Department and KCATA executed an MOU in 2016 requiring KCATA to provide wheelchair-accessible transport, when available. The MOU requires that at least one officer will ride onboard the KCATA vehicle when any arrest is being transported. The officer will

also be responsible for securing the arrest upon entry to any KCATA vehicle. KCATA vehicles will transport Department arrests within the greater Kansas City region, if needed, and may be requested for persons who are not using a wheelchair but who have other mobility issues. If the KCATA is contacted and indicates a vehicle is unavailable, then transport a person using a wheelchair in a low-profile Department patrol car instead of a wagon or SUV.

If the person uses crutches, walker, cane or wears leg braces, transport the person in a lower-profile Department patrol car instead of a wagon or SUV, the same as a person using a wheelchair. Again, KCATA assistance may be requested for these persons.

If a person using a wheelchair, walker, cane or wearing leg braces is transported, be sure the individual's wheelchair or other device is transported and stored in a secure place during the individual's detainment, and is available for the person's use if needed.

II. Insulin pumps and continuous glucose monitors.

In recent years, insulin pumps and continuous glucose monitors [CGM] are more commonly being used by diabetics, especially Type 1 diabetics. Parts of these devices adhere to the outside of the body or clothing and may include tubing, while the remainder of the device is literally inserted into the body and cannot be seen with the naked eye. Pumps and CGMs are usually worn on the abdomen, but may also be inserted into the leg, upper buttocks, shoulder blade area, or arm.

Some pump and CGM users also use a separate display device or monitor the size of a pager to monitor blood glucose levels. Other persons have no separate monitor because they use a special "APP" downloaded on their cell phone for monitoring purposes.

Pumps and CGMs should not be removed.

III. Blind or visually impaired.

It is important for officers to identify themselves and to state clearly and completely any directions or instructions when encountering a person who is blind or visually impaired. Read aloud in full any documents that a person who is blind or visually impaired needs to sign, documenting in your reports the fact you did so. Before frisking, searching, transporting, taking photos, or fingerprinting such persons, you should describe the procedure in advance so the person will know what to expect.

As with a wheelchair, if a blind or visually impaired person uses a walking stick as an assistive device, be sure the person's stick is transported and stored in a secure place during the person's detainment.

IV. Service dogs.

If a disabled individual accompanied by a service dog is being arrested and transported, ask the person for the name and contact information of a family member or other trusted person who can pick up the dog. Another option is to contact Animal Control, being sure to advise the responding Animal Control Officer that the dog is not a mere pet or stray. Ask Animal Control to keep the dog separated from other animals and to hold the dog in a safe place until it may be retrieved by the owner or owner's family. Finally, if family, friends and Animal Control are unavailable, contact the Great Plains ASPCA and ask for the on-call foster care worker or management. Be certain to document all of these communications regarding service dogs in your reports.

V. Deafness.

To communicate with an individual who is deaf, in a simple encounter such as checking a driver's license, issuing a traffic ticket, or giving directions, a notepad and pencil normally will suffice. If a person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later for booking, if needed.

During interrogations a sign language interpreter will be necessary to effectively communicate. If the legality of the conversation may be questioned in court, such as where *Miranda* warnings are issued, using a sign language interpreter is a prudent course of action. Those conducting the interrogation should be sure to document the use of the interpreter in their reports. In Kansas City three sign language services may be contacted. All provide 24/7/365, metro-wide, service:

Deaf Expression, Inc. (913) 268-3323 (Shawnee Mission)
Interpretek⁴ (816) 246-8770 (Lee's Summit)
Able Hands (916) 838-4263 (Liberty)

Members may also call the Communications Unit, who may be able to contact an on-duty Department member who is sign-language fluent.

Questions about the content of this Legal Bulletin should be directed to the Office of General Counsel.

ISSUED BY:
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⁴ Formerly known as "Sign Language Specialists."