

Appendix 1H

Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence

Developed in partnership with Vera Institute of Justice - Center on Victimization and Safety

Introduction

Approximately 15 percent of the U.S. population, or 37.5 million adults, report some degree of hearing loss.¹ People experience hearing loss in a broad variety of ways, but many identify as a distinct cultural group and view being deaf as a positive aspect of who they are -- not something that needs fixing. This subset uses an uppercase "D" to reflect their identification with Deaf culture as opposed to a lowercase "d," which reflects the auditory condition of hearing loss. It is estimated that between 200,000 and 500,000 individuals in the United States are culturally Deaf.² This training memo addresses the language access needs, primarily the use of interpreters, for Deaf individuals.

Deaf Communities in the United States

The Deaf community includes diversity in terms of race, ethnicity, religion, sexual orientation, gender identity, disability, and socioeconomic status. People in the Deaf community also identify in different ways depending on the type and degree of deafness they experience, which, in turn, affects how they communicate. There are several possible ways Deaf people may communicate:

- D/deaf: people who grow up deaf, most of whom use American Sign Language (ASL), and people who use another form of sign language (Mexican, British, etc.) or home sign language

¹ National Institute on Deafness and Other Communication Disorders, "Quick Statistics About Hearing," accessed December 5, 2019, <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing>.

² Williams, C. R., & Abeles, N. (2004). Issues and Implications of Deaf Culture in Therapy. *Professional Psychology: Research and Practice*, 35(6), 643–648. <https://doi.org/10.1037/0735-7028.35.6.643>

- DeafBlind: people who have varying degrees of hearing and vision loss and may use ProTactile Language, tactile ASL, close or restricted vision sign language or finger-spelling
- Hard of Hearing: people who may be deaf (but do not identify with Deaf culture) or have limited hearing because of aging or other medical issues
- Hearing: children of Deaf adults (CODAs), other family members, and ASL interpreters may also be members of the Deaf community.³

More on Deaf Culture

Deaf culture can be a defining feature of people's lives and their experiences of being deaf. It coalesces around a shared language and shared values that encourage close relationships and connections with other Deaf people.

Shared Language: While there is diversity of language use and forms of communication within the Deaf community, ASL is the most common and most effective method of communication. ASL is distinct from English and does not follow English grammar structure. It cannot be assumed that Deaf people are fluent in written English. Many know how to read and write English but it is important to confirm if this is true. Not all Deaf people use or understand ASL, nor is ASL universal. Sociological factors – including age, gender, race (e.g., Black Sign Language), and ethnicity (many countries have their own distinct sign languages) – also contribute to the range of languages used within the Deaf community.⁴

Shared Values, Norms, and Traditions: Deaf communities tend to be small and tight-knit, valuing interconnectedness and membership in the group. Transparency, information-sharing, and resource-sharing among community members is vital since Deaf people do not have the same access to information as hearing people. In Deaf culture, eye contact and pronounced facial expressions are essential and communication is direct, all of which can be considered overly blunt, exaggerated, and/or off-putting by hearing people.

³ I. Leigh, J. Andrews, and R. Harris, *Deaf Culture: Exploring Deaf Communities in the United States* (San Diego, California: Plural Publishing Incorporated, 2016).

⁴ National Institute of Deafness and Other Communication Disorders, 2014.

Domestic and Sexual Violence in Deaf Communities

Statistics on domestic and sexual violence against Deaf people vary significantly depending on definitions. Research has shown that Deaf and hard of hearing people face rates of sexual violence and intimate partner violence that are anywhere from 1.5 to 3 times higher than those of hearing people.⁵

Unique Dynamics of Abuse

Abusers, especially hearing abusers, will use society's preference for hearing culture, referred to as "audism," to their advantage to further abuse Deaf victims. Abusive partners are able to use unique tactics of abuse specific to Deaf people that may not be obvious to hearing people. Practitioners, including advocates, law enforcement and other first responders, should be alert to the following abusive or potentially abusive behaviors:

- Targeting injury to hands or eyes
- Withholding, damaging, or destroying communication equipment
- Signing very close to the victim's face
- Criticizing or making fun of someone's ASL skills
- Monitoring electronic communication
- Not telling the Deaf person when someone else is calling or attempting to get their attention
- Intentionally interpreting information incorrectly to the Deaf person
- Excluding the Deaf person from important conversations
- Not allowing children to use or learn ASL
- Making fun of the way a Deaf person signs and uses facial expressions

⁵ Melissa L. Anderson & Irene W. Leigh (2011), Intimate Partner Violence Against Deaf Female College Students, 17 (7), 822-834.
<https://journals.sagepub.com/doi/10.1177/1077801211412544>

Barriers to Help

While all survivors of domestic and sexual violence face barriers to receiving services, Deaf survivors face some unique challenges⁶:

- Most emergency hotlines or first contacts involve audio-based outreach.
- ASL interpreters are rarely used at the point of initial contact, such as with 911 or law enforcement, when a survivor is most likely to be experiencing trauma.
- If a Deaf person is forced to communicate in written English or by reading lips, the likelihood of misunderstanding and misinformation is high.
- Interveners often misconstrue signing or other forms of expression by a Deaf person as threatening or aggressive; this can result in an inaccurate assessment of what is occurring.
- Interveners often attempt to rely on family members to interpret – family members who are not neutral to the situation or outcome. The hearing abusive partner is also frequently used to interpret and will frequently mislead authorities to evade consequences for their actions and further their control over the victim.

Audism creates numerous additional barriers for Deaf people involved in the criminal legal system. Interveners can inadvertently contribute to these barriers in the following ways:

- Requiring a Deaf person to communicate in either spoken or written English
- Failure to offer and provide an interpreter
- Deferring to what a hearing person in the room is saying, thereby devaluing communication with the Deaf person
- Asking a Deaf person to read lips
- Telling a Deaf person to “calm down” if they are signing in a large, animated way

⁶ Opsahl, N., & Pick, L. H. (2017). Understanding the Sexual Assault Disclosure Experiences of Deaf Women. *JADARA*, 51(3), 44-67. Retrieved from <https://repository.wcsu.edu/jadara/vol51/iss3/3>

Unique Safety and Confidentiality Considerations

To quickly assess emergency situations, officers and other first responders may be tempted to rely on people at the scene to interpret for Deaf people. Protecting safety and confidentiality, however, is critical, and best achieved when using the services of a qualified interpreter (more information on qualifications below) as soon as possible. It is also important to ask if the survivor, perpetrator, or family members know the interpreter, what connections they might have, and whether they have any hesitation before using them. This also applies to sign language interpreters, Deaf advocates, and Deaf social service providers.

Effective Communication

Providing effective communication to any Deaf or hard of hearing person is an ethical, moral, and legal mandate for first responders, law enforcement, and others in the criminal legal system (more on this below). An essential starting point is to determine whether the Deaf person can communicate effectively to you and with you, as well as receive information from you. Next, it is equally important to determine the Deaf person's preferred method of communication (more on this below). While their preferred method may not be available immediately, it should be procured as soon as possible, especially during any emergent or traumatic event.

Effective communication is a two-way street – both parties to any conversation must understand what is being communicated. Reliance on lip reading or written English as a strategy is inadequate and should be avoided. Because English is the second language for most ASL users, asking a victim in the midst of a trauma write back and forth in their second language will almost certainly cause misunderstanding, misinformation, and potentially result in a false or inaccurate report of the incident.

- ⇒ *Remember*: Language is contextual. English words related to victimization, trauma, and violence will likely not be in the forefront of a Deaf person's thinking even if they know some English or are proficient in English under non-traumatic circumstances.
- ⇒ *Ask yourself*: What are the consequences to the Deaf person or to your department or agency if there is a misunderstanding? Might the charges or conviction be challenged if there was ineffective communication?

Sign Language Interpreters and Services

“Certified” interpreters have gone through the certification process of *National Registry of Interpreters for the Deaf* (RID). This process has several pathways to certification that include different levels of certification, one of which is certification to responding to domestic violence calls. While they may not have had the opportunity or resources to be certified through RID, “qualified” interpreters adhere to the competency and ethical requirements of RID and to their role as interpreter and do not assume other roles, such as advocate or advisor. Both certified and qualified interpreters can interpret the conversation from ASL to English and English to ASL. It is essential that they be familiar with terms associated with the topic discussed, in this case domestic violence response. It cannot be assumed that anyone who knows, uses, or is fluent in ASL is a qualified interpreter.

Who Should Not Interpret

Friends, family members or others at the scene: Friends and family should not be used as interpreters *except* in exigent circumstances to determine the nature of the situation, address immediate safety needs, attend to injuries, *or if:*

- the Deaf individual requests that an accompanying adult interpret,
- the accompanying adult agrees to interpret, *and*
- the reliance on that adult is appropriate under the circumstances (i.e. the suspect should never interpret for the victim).

Once the exigency has passed, secure the services of a qualified interpreter as soon as possible and continue to use the interpreter for the remainder of the communication.

Family members or friends cannot be assumed to be neutral and can influence what those involved are saying or give inaccurate interpretation. Further, they also may be witnesses in future civil or criminal proceedings.

Bi-lingual employees and advocates: Hearing employees fluent in ASL (bi-lingual) should only be used as interpreters in exigent circumstances and should be replaced with a qualified interpreter as soon as possible. Bi-lingual employees may be qualified to respond to an incident involving a Deaf person but should not be relied upon to provide interpretation unless they have been designated

through some official process as a qualified interpreter. Unless RID-certified, they are not bound by the interpreters' professional standards and ethical code of conduct. Similarly, bi-lingual advocates should only be used as interpreters in exigent circumstances so they can focus on the survivor's needs.

Types and Methods of Interpreter Services

Deaf people have a variety of communication needs and a variety of interpretation types and methods exist to address them. The manner of communication must be dictated by the Deaf person, not by the agency or practitioner. Criminal legal system agencies should, therefore, ensure access to each type of strategy listed below to be the most nimble and responsive to individual needs. To facilitate clear and accurate communication, practitioners should determine:

- 1) the individual's preferred language (ASL, Black Sign Language, Mexican Sign Language, etc.),
- 2) their interpretation needs (ASL, Deaf, ProTactile, etc.), and
- 3) the most appropriate method of communication for the circumstances (text messaging, VRI, etc.).

Types of Interpreters

- 1) Hearing American Sign Language Interpreter: most ASL interpreters are not native ASL users and learn ASL as a second language. They are hearing people with ASL fluency who can interpret the conversation from ASL to English and from English to ASL. They generally work in teams of two, taking turns interpreting, for complex or important assignments such as police interviews or engagements exceeding one hour.
- 2) Deaf Interpreters⁷: Deaf Interpreters (DI) are Deaf or Hard of Hearing people who act as cultural mediators between the Deaf and hearing worlds. They have specialized training and use gestures, mime, pictures and other strategies to facilitate communication. They will frequently work in teams with ASL

⁷ <https://rid.org/rid-certification-overview/available-certification/cdi-certification/>

hearing interpreters. DIs are particularly effective in working with Deaf people who have additional barriers, such as autism or developmental of intellectual disability; Deaf people who don't use ASL but another form of sign language; DeafBlind people; or individuals who are experiencing acute trauma.

- 3) ProTactile Interpreters – These interpreters are Deaf/Blind and sign using touch, which could include signing in ASL, using a modified form of visual sign language, or a tactile communication that taps Braille into a person's palm. A ProTactile interpreter should work in tandem with a hearing ASL interpreter in criminal legal cases.

Methods of Communication

- 1) In-Person Interpretation: It is best practice to use in-person interpreters whenever possible. In-person interpreters are particularly helpful in emergencies to facilitate clear communication and ensure that there are no misunderstandings.
- 2) Sight Interpretation for Written Documents: While not a “method” per se, some interpreters will specialize in sight translation or sight interpretation. This skill involves taking written text, such as a Victims Rights Brochure or information on how to obtain a protection order and translating it into ASL.
- 3) Video Remote Interpretation (VRI): If it is not possible to secure the services of an in-person interpreter, such as in rural communities, short-term or unscheduled needs, emergency situations, and/or due to existing confidentiality concerns, it is acceptable to use a VRI service. VRI is a video telecommunication service that uses devices such as web cameras or videophones to provide ALS interpretation. This is done through an offsite interpreter to communicate with Deaf people.
- 4) Text Telephone (TTY) or Telecommunication Device for the Deaf (TDD): While considered to be outdated, many communities (especially in rural areas) continue to rely on the use of telecommunication devices known as TTY or TDD machines to communicate via text. There can be fewer technical difficulties with TTY or TDD machines, such as those caused in VRI due to

insufficient WiFi broadband strength. For TTY to be effective, however, both ends of the communication must be equipped with TTY.

- 5) Text messaging or written notes: While not the most effective form of communication in exigent circumstances, some Deaf people will prefer to communicate via text messaging or written notes.

NOTE: The COVID-19 pandemic has resulted in the use of many innovative strategies for responding to domestic violence in ways that mitigate public health risks; for instance, multiple jurisdictions have increased their reliance on virtual platforms at different stages of the case process. If your jurisdiction utilizes virtual platforms for any interactions, it is important to prepare to meet the specific accessibility and confidentiality needs of Deaf people. Several resources have detailed guidelines for how to engage in accessible interactions with Deaf people on remote platforms. Praxis recommends careful adherence to these specifications. More information can be found here:

<https://www.endabusepwd.org/covid-19/> and

<https://www.endabusepwd.org/publications/zoom-meetings-overview/>

Working with Interpreters

Following some basic guidelines for working with an interpreter – whether in person or through VRI – can increase a Deaf person’s comfort and maximize the possibility of a clear, accurate, and complete conversation:

- Introduce yourself to the interpreter. Give the interpreter and the Deaf person a few moments to become familiar with one another and their communication/signing needs and style.
- When possible, the interpreter should sit or stand beside or just behind the practitioner.
- Speak directly to the Deaf person, not the interpreter. Avoid saying, “Will you ask her about?” or “Will you explain to them?”
- Do not ask questions of the interpreter during the interaction with the Deaf person. They cannot respond during the interaction and are trained not to offer an opinion or feedback.
- Speak naturally and at a normal pace and tone.

- Do not have side conversations with the interpreter or others on-site or ask the interpreter to refrain from interpreting something to the Deaf person. The interpreter will interpret everything that is said, including side conversations.

Proactive Strategies for Agencies

The Americans with Disabilities Act of 1990, Title II, (ADA) requires all government programs, agencies, services and regulatory activities to provide communication to Deaf and Hard of Hearing people that is equal to, or as effective as, communication with hearing people.⁸ This applies to all 911 call centers, law enforcement agencies, courts, and those associated with carrying out the duties of the criminal and civil legal systems.

To support effective compliance of this federal law and to streamline language accessibility, agencies should develop and implement a robust language access plan that provides direction to employees about how to determine the need for and access interpreter services as well as other methods for effective communication, including what to do as they wait for interpreter services to arrive⁹. To begin developing or enhancing a language access plan, consider the tips below:

- learn about the Deaf community in your area;
- connect with local Deaf providers and advocacy organizations, ask for recommendations for interpreters, interpreter services, etc.;
- research local, regional, Tribal, territory, or state interpreter services and methods of interpretation;
- reach out to Tribal, territory, or state coalitions, advocacy groups, or governmental agencies for recommendations and language access templates and protocols; and

⁸ Americans with Disabilities Act Title II Regulations, https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

⁹ Consider creating ASL-accessible pre-recorded videos to play on a tablet or cell phone (or through VRI/VRS) that explains your preference to wait to start communication or provide any information.

- reach out to national organizations that can provide interpreter services, advice and direction for developing a language access plan, or templates for local use (see resource list below).

Conclusion

Because Deaf people are at higher risk for experiencing domestic and sexual violence, law enforcement, advocates, and prosecutors should be prepared to work and effectively communicate with members of the Deaf community. Language access is vital to any criminal justice process, but especially so during the trauma of domestic and sexual violence. Planning today can create a more supportive process for Deaf victims and a more effective investigation of cases involving offenders who are Deaf.

Resources

- *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*, <https://www.ada.gov/lawenfcomm.htm>
- *Culture, Language, and Access: Key Considerations for Serving Deaf Survivors of Domestic and Sexual Violence*, <https://www.vera.org/downloads/publications/serving-deaf-survivors-domestic-sexual-violence.pdf>
- Organizations for Deaf Survivors of Abuse, <https://vawnet.org/sc/organizations-deaf-survivors-abuse>
- State-level hard of hearing commissions, <https://www.hearingloss.org/hearing-help/financial-assistance/state-agenices/>
- *Registry of Interpreters for the Deaf (RID)*, <https://rid.org>

This project was supported by Grant No. 2015-TA-AX-K032 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed here are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.