



[Deaf People in the Criminal Justice System: Selected Topics on Advocacy, Incarceration, and Social Justice](#)

Debra Guthmann, Gabriel I. Lomas, Damara Goff Paris, and Gabriel A. “Tony” Martin, Editors

Chapter Summaries

Chapter 1

Demographics and Etiology in Deafness: Sociocultural Elements of Relevance to the Criminal Justice System

Damara Goff Paris, E. Basil Kessler, and Gabriel A. “Tony” Martin

Dr. Damara Goff Paris is one of the editors of this volume. Dr. Paris is currently an associate professor in counselor education for Emporia State University, is the president of ADARA, and holds licensure in professional counseling and rehabilitation counseling. She has worked with victims of crime and individuals with co-occurring disorders who have gone through the criminal justice system.

Dr. E. Basil Kessler is an assistant professor in counselor education at Emporia State University. He holds licensure as a professional counselor and is a Certified Rehabilitation Counselor (CRC). He began his professional life as a case manager working with members of the Deaf community and as a certified interpreter. He served for 10 years on the Kansas Commission for the Deaf and Hard of Hearing in three capacities: interpreter representative, mental health representative, and Ex-Officio for the Kansas Department of Education.

Dr. Gabriel A. “Tony” Martin was a Department Chair for over 20 years at Lamar University’s Deaf Education and Deaf Studies program. He also served as an interpreter for the SE Texas DHH community and a consultant on court cases involving deaf individuals. Dr. Martin unexpectedly passed away during the writing of this chapter. We honor his work by keeping his name as a co-author.

In Chapter 1, the authors take the reader through an understanding of the Deaf community that moves from the medical model to the cultural model of deafness. They note that the etiology of a hearing loss (which includes information about the types and causes of hearing loss) is not as important as the often-overlooked dimensions of the socio-linguistic and cultural elements of being deaf. They remind the reader that there are many dimensions in multiple minority membership.

The authors trace a history of public policy that was intended to help federal agencies better understand how those medical conditions that caused hearing loss impacted individuals and society medically, socially, and economically. As much as Paris, Kessler, and Martin understand the obligation the government has to address medical conditions that affect the populous, they also illustrate that much more and different information must be obtained and analyzed in order to understand the multiple realities that exist among deaf people. For example, a child who is born deaf and who has deaf parents often has a completely different upbringing—linguistically, culturally, and educationally—than a deaf child whose parents are hearing. Military personnel who experience combat-related traumatic brain injuries with secondary hearing loss have communication needs that differ, significantly, from those who have Ménière’s disease.

The authors share that inmates with one disability make up 32% of the federal prison population and 40% of the jail population. Youth with disabilities are disproportionately represented in correctional facilities and 6.5% of inmates in federal prisons and jails are deaf or have a severe hearing loss. The reader is provided with two cases involving deaf adults

denied access to sign language interpreters and whose police interactions and legal cases were exacerbated by lack of communication access.

In the final third of the chapter, the authors detail that data collection remains problematic in the attempt to understand the lives of deaf people. They identify difficulties in having adequate participation of deaf citizens in national surveys because potential participants are unaware of such surveys or the demographic information is not pertinent to them. For example, the US Census states on their website that questions regarding languages that are spoken fail to include information about sign language users. Additionally, ASL users are counted as those who speak English. The authors stipulate that many surveys are not accessible because they use traditional survey methodologies which overlook materials, and information is not translated into visual modes which differ significantly among possible participants.

The chapter ends with recommendations on data design and collection across multiple offender-driven agencies including DOJ, federal prisons, and jails. The authors echo researchers' findings to enforce ADA self-evaluation plans; quantify communication preferences of inmates; and identify the use of hearing assistive devices and prisoner preference for various technologies, i.e., videophones, amplified equipment captions, or signed education materials.

They encourage law enforcement agencies to begin to document types of accommodations based upon disability type, risk factors of citizens through interaction of untrained officers, and time spent training said personnel on issues pertinent to deaf citizens. They urge court systems to collect data on those who need sign language interpreters, certified deaf interpreters, real-time captioning, and assistive listening devices. They advise transitional and community-based services to be proactive in determining how accessible their programs are and the relevance of the community reintegration services offered.

Chapter 2

Assessing Linguistic Incompetence in the Criminal Justice and Mental Health Systems

Roger C. Williams

In Chapter 2, Williams discusses the importance of a thorough communication assessment in determining competence to stand trial. While there is inconsistent legal guidance in this area, there are cases where the courts have held that even in the absence of a mental illness or an intellectual disability, an individual may lack the communication skills to effectively participate in the court process. This chapter lays out the reasons why assessing linguistic competence should be part of the competency assessment and presents the Communication Skills Assessment, an example of a comprehensive communication assessment tool. Through the use of a case example, the process of conducting an assessment is described and information is presented on how it can be used to aid the court in making a determination related to competency to stand trial.

Chapter 3

Research Methods with Deaf People in the Justice System

Raychelle L. Harris and Donna M. Mertens

Raychelle Harris, Ph.D., is a professor in the Department of ASL & Deaf Studies at Gallaudet University, Washington, DC. Dr. Harris has presented and published on topics related to research ethics and the cultural and linguistic aspects of teaching, interpreting, and researching with Deaf communities.

Donna M. Mertens, Ph.D., is Professor Emeritus, Gallaudet University. Dr. Mertens' main focus is on research methodology and social transformation; she has done an evaluation of a court access project for deaf and hard of hearing people.

Drs. Harris and Mertens explore the world of research with deaf people in the criminal justice system and give readers examples of how research with small populations can be done. Individuals who do research regarding deaf people within the criminal justice system will find this chapter beneficial in designing their research methods. This chapter is also

relevant for researchers focusing on deaf people who are victims of crimes. While the processing of physical evidence is not different depending on the accused person's hearing status, a multitude of linguistic and cultural issues arise when the person who is in contact with the criminal justice system is deaf. Those issues are relevant when considering doing research with deaf people and their experiences within this kind of setting.

One challenge for researchers in the deaf field is the small numbers of people in this group. This problem is magnified even further because most departments of corrections do not maintain a database of deaf prisoners. By using a Transformative Paradigm and culturally appropriate ethical research guidelines that include the community during the research process, Harris and Mertens explore key principles to ethically conduct research with Sign Language Communities (SLC) and provide recommendations for conducting research on deaf persons within the criminal justice system.

Chapter 4

School-to-Prison Nexus: Deaf Youth and the Juvenile Justice System

Gabriel I. Lomas, Ph.D.

In this chapter, Dr. Lomas writes about the numerous systems experienced by deaf juveniles, both inside and outside of the justice system. He contends that these systems often lack therapeutic properties and, instead of helping troubled youth, they serve to propel them from schools to prison. Dr. Lomas gives readers examples to illustrate how nine variables, or nexus points, intersect to escalate problems, turning deaf minors away from healthy treatment and toward the carceral system.

The author also describes the experience faced by deaf youth at various stages of the legal system. Services available to hearing people are summarized, emphasizing the lack of access to these systems for deaf youth. Readers will identify the contributors to the pipeline and review advocacy points to improve systems to help disrupt the school-to-prison nexus.

Chapter 5

Substance Use Disorders Among Deaf Offenders

Debra Guthmann and Marcia Kolvitz

Dr. Debra Guthmann is one of the editors of this volume. Dr. Guthmann has worked within the Deaf community for over 40 years in educational (secondary and post-secondary), medical, and social service settings. Dr. Guthmann was the founding director of the Minnesota Substance Use Disorder Program for Deaf and Hard of Hearing Individuals, which opened in 1989 and was one of the first inpatient treatment programs for deaf and hard of hearing people in the country. Dr. Guthmann is currently the lead consultant for a federal grant with Wright State University focusing on the validation of mental health, substance abuse, and career related screening tools in American Sign Language.

Dr. Marcia Kolvitz is a consultant who focuses on issues related to education, vocational rehabilitation, and transition services. She has over 40 years of experience addressing education and access issues for students who are deaf and hard of hearing in K–12 programs and postsecondary educational settings. Dr. Guthmann and Dr. Kolvitz are both past presidents of ADARA.

In Chapter 5, Dr. Guthmann and Dr. Kolvitz discuss the intersection of substance use, mental health, and criminal behavior among deaf people. They address the presence of co-occurring disorders related to deaf offenders who have substance abuse issues. Throughout the chapter, the experiences of two deaf men are included to give the reader insight into the life experiences of deaf offenders with substance use and mental health issues.

Guthmann and Kolvitz begin the chapter by discussing the prevalence of substance use and criminal activity within the hearing community. Unfortunately, there has been little research to date about the prevalence among inmates who are deaf. The authors include an overview of some of the literature that has been published focusing on substance use and criminal activity within the deaf community. This literature review also includes the discussion of several small prison studies involving deaf inmates, a recently completed prevalence study regarding substance use with deaf individuals,

information about barriers, and a follow up study that was completed by those who had gone through treatment. The chapter highlights the need for more research in these areas.

Dr. Guthmann and Dr. Kolvitz discuss how deaf offenders face a number of barriers to communication and other kinds of access throughout the criminal justice system. They highlight the need for providing effective communication access—whether through ASL interpreters, videophones, video relay services, printed materials, visual notifications, or TTYs—to assist deaf individuals to better understand the judicial process as well as the rules and procedures that typically occur in correctional facilities.

The authors also discuss the gaps in state and federal prisons that exist between available addiction treatment, inmate participation, and the need for such services. Guthmann and Kolvitz share anecdotal stories from deaf inmates who are in facilities where they are housed with other deaf inmates, and examples from those who may be the only deaf individual in their facility. They discuss how deaf inmates may be unable to access prison programming such as substance use treatment and 12-step programs, and that without an interpreter or other support services, these individuals may be released much later than if that access was provided. Further exacerbating the problem is that currently there are no evidence-based treatment programs specifically designed for deaf individuals, whether incarcerated or not. The lack of accessible options for deaf individuals who may be required to participate in treatment as terms of their release is problematic since few if any programs are available in most communities.

Another area that the chapter covers are those deaf individuals who may have mental illness, learning disabilities, attention deficit disorder, or cognitive disabilities, and how this has been linked to increased rates of substance abuse within the general population. The authors discuss the importance of conducting assessments and providing accurate diagnoses to identify and better understand hidden disabilities among deaf individuals, including those who are incarcerated.

Guthmann and Kolvitz note that there is insufficient training provided for law enforcement officers and prison staff regarding communication with deaf individuals. The authors express their concern about the lack of understanding and training among prison staff about communication barriers and cultural experiences, and the negative impact this may have on deaf individuals who are incarcerated. They recommend addressing the lack of evidence-based programs for this population as well as shortages of accessible substance abuse and mental health programs nationally. They conclude the chapter by including additional recommendations such as steps that could be used to build and implement accessible programming in prison for inmates.

Chapter 6

Deaf People Within the Justice System: Insights from the United Kingdom

Susan O'Rourke, Sally Austen, and Elizabeth Wakeland

Based in the United Kingdom, Dr. Sue O'Rourke is a consultant clinical psychologist who has worked mainly in deaf forensic services and provides psychological reports to the courts in a variety of cases involving deaf people.

Dr. Sally Austen is a consultant clinical psychologist who works with sign language users who have severe and enduring mental health problems or cognitive impairment.

Dr. Elizabeth Wakeland is a clinical and forensic psychologist who has previously worked within deaf services, including forensic services, with sign language users who have enduring mental health problems.

In this chapter, the authors review the literature around deaf people within the criminal justice system. They consider the prevalence of offending behaviors within people from deaf communities and both risk and protective factors that may apply. The authors also explore at length how the Appraisal Model of Behavior is a useful tool from which to think about the bio-psycho-social factors that may influence a deaf person's offending behavior. They also focus on the journey that deaf offenders make from arrest through the court and then prison services. Within the chapter the authors highlight how the lack of understanding at all levels of service provision can have a negative impact in terms of discriminatory practice. Finally, they consider desistance and how the generic research may or may not be applicable to

the deaf community. The authors highlight how lack of access and discrimination need to be addressed in order to improve the system for deaf people.

Chapter 7

Discourse, Sign Language Interpreters, and the Criminal Justice System: Implications for Communicating With Deaf People

Theresa B. Smith

Theresa Smith has long been both a practicing interpreter and an educator of interpreters. She holds a BA in English Literature and Education, an MA in counseling, and a Ph.D. in sociocultural anthropology from the University of Washington, where her dissertation focused on the culture of the American Deaf community as expressed in discourse. Additionally, she is certified by the Registry of Interpreters for the Deaf (RID) in 'legal interpreting' (SC:L) as well as the now-defunct MCSC.

This chapter explores the complexity of what it means to interpret for people who are deaf or hard of hearing within the criminal justice system. The approach used is ethnographic and presents an analysis of actual cases involving deaf and hard of hearing people as they encountered the criminal justice system and communication was unsuccessful. The focus is on discourse: where language, culture, individual experience, and situation meet, merge, and create meaning.

Examining these cases makes clear the importance of context. Context is both immediate and personal, as well as historical and cultural. These contexts form the lenses through which participants establish perceptions of one another as well as expectations, and thus create an understanding (accurate or not) of not only what is said, but what is intended. The importance of contexts as formative of meaning applies generally to all participants in the criminal justice system, including consulting psychologists, as well as police officers, attorneys, and judges—and interpreters themselves.

The next part of the chapter examines more closely the meaning of relevant terms: language, fluency, bilingual fluency, heritage speaker, and marginalized language. With this foundation, the current education and certification of interpreters in the United States is outlined and related to what it means to be qualified.

The chapter concludes with specific recommendations for establishing policies and procedures and for the hiring and use of interpreters within the criminal justice system, including arguments for using teams of interpreters, a consecutive approach (first listening, then interpreting versus trying to interpret while listening at the same time), and including interpreters who are themselves deaf (native users of the relevant sign language) on the team.

Chapter 8

Deafness, the Individuals with Disabilities Education Act, and the Juvenile Delinquency System

Daniel Shaw

Daniel Shaw, J.D., has spent years representing hundreds of children and families in special education, civil rights, and personal injury cases and has extensive experience litigating at the administrative level, district and state court, and the Ninth Circuit Court of Appeals. As a parent of a child with profound hearing loss, Mr. Shaw has sat on all sides of the table and his daughter has helped shape his passion for the law and the families he serves.

Mr. Shaw begins his chapter with a brief history of special education and the Individuals with Disabilities Education Act (IDEA). He feels that the greatest catalyst toward educating children with special needs in public school came in a U.S. Supreme Court decision dealing with racial segregation in America's public schools in *Brown v. Board of Education*, 1954 when they recognized that segregation had no place in public education. Mr. Shaw states that *Brown* also inspired individuals with disabilities, parents, teachers, and others to begin to advocate for the desegregation of children with special needs from public education. Mr. Shaw also discusses other important legislation that was essential in the development of IDEA. The author goes on to describe a brief history of the juvenile delinquency system and how it began with the presumption that children were worthy of rehabilitation and that society had an obligation to assist youth

offenders in becoming productive members of society. He states that there are few juvenile detention facilities, if any, prepared to meet the needs of deaf youth. Mr. Shaw points out that it is important to remember that incarcerated deaf youth are still entitled to their IDEA services. He says that despite the IDEA, there has been little done to ensure incarcerated deaf youth get the services they are entitled to. Mr. Shaw continues in his chapter with a description of the IDEA related to the delinquency system. He indicates that the greatest tool preventing deaf youth from being swallowed up by the delinquency system is the IDEA and that whether incarcerated or not, they continue to have a right to special education designed to meet their unique communicative needs.

Many delinquent youths may suffer from mental health issues and many juvenile delinquency facilities are not prepared to meet the needs of these youth. Mr. Shaw discusses why it is imperative that the IDEA rights of delinquent deaf youth be protected. These procedures mandate compliance with the IDEA as the juvenile court determines what to do with incarcerated special education students. Mr. Shaw points out that many states do not have specific legislation to create interplay between the juvenile delinquency system and the IDEA and that for deaf youth, this is critical in meeting their unique needs and to preventing recidivism

Mr. Shaw feels that an unintended consequence of highly mobile deaf youth is that there is no specificity in the IDEA as to how incarcerated deaf youth are treated under IDEA and how those rights happen, given the complexities of being in a state delinquency system. Mr. Shaw uses California as an example and indicates that when deaf youth are incarcerated in that state, the responsible educational agency changes from the entity where the parent or guardian resides to the county office of education where the juvenile detention facility is located. As a result, a deaf student arrested for criminal conduct and incarcerated becomes the legal responsibility of an entirely new entity. Under California law, the county office of education where the juvenile detention facility is housed also becomes financially responsible for the student's IDEA services. Mr. Shaw discusses how this creates a financial burden on these entities when dealing with the complexities of meeting the needs of deaf youth. For example, a deaf youth might require (besides specialized academic instruction using their preferred form of communication) cognitive behavioral therapy or some other form of mental health intervention. It is much costlier to provide such services to deaf youth because they require a clinician fluent in their form of communication who has experience serving that population.

How deaf children end up in the juvenile delinquency system is complicated and varies from child to child. However, for those who work with these children there are anecdotal trends which resonate common themes. Mr. Shaw discusses the case of Bobby throughout the end of his chapter to illustrate the complicated path toward incarceration. The case study is drawn from the author's personal experience. Bobby's story helps us understand the often-ignored path many deaf youth take to the delinquency system, the complexities of serving deaf youth, how the IDEA can aid in supporting deaf youth, and how the IDEA (or relevant state law) can undermine addressing the unique needs of deaf youth once incarcerated. To better address these issues, Mr. Shaw indicates that it is imperative for deaf youth, parents, advocates, attorneys, educators, social workers, judges, and all those involved in raising our deaf youth to familiarize themselves with the IDEA. The author ends his chapter by giving a number of recommendations to consider when advocating for deaf youth

Chapter 9

Nondiscrimination in the Criminal Justice System: An Examination of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Barry C. Taylor and Rachel M. Weisberg

Mr. Taylor and Ms. Weisberg are both attorneys at Equip for Equality, which is an organization in Illinois that provides free legal services to people with disabilities. They are part of the national network of disability rights organizations called the "Protection and Advocacy" or "P&A" network. Mr. Taylor and Ms. Weisberg represent a group of people who are Deaf and hard of hearing who are incarcerated in the Illinois corrections system. They represent deaf people in other types of legal cases as well, including employment discrimination, effective communication for healthcare,

and access to higher education. Mr. Taylor and Ms. Weisberg also provide training on the Americans with Disabilities Act to educate others about the law.

The authors begin this chapter with an overview of the ADA and Section 504, focusing on the requirement to provide effective communication and how they apply to criminal proceedings. They examine the statute and regulations and discuss how they define terms such as auxiliary aids and services, interpreters, and video remote interpreting. After sharing this background, the authors provide an in-depth review of important case law and settlement agreements in the criminal justice context. Mr. Taylor and Ms. Weisberg start by looking at issues related to law enforcement, where many cases consider how to provide effective communication during police encounters and when police departments must provide interpreters during arrests. They wrap up that section by discussing settlements, policies, and practical guidance about effective communication and law enforcement.

Next, the authors focus on correctional facilities that include prisons or jails. Similarly, they review important legal cases to help the reader understand how the ADA and Section 504 apply to prisons. Through a review of case law and settlements, the authors look at issues related to interpreters, telephone access including video phones, accessible alerts, assessments of needs, and access for companions.

Before wrapping up, Mr. Taylor and Ms. Weisberg share a brief overview of the type of defenses law enforcement, corrections, or a criminal court can make when defending ADA cases, including arguing that a request would be an undue burden or a fundamental alteration. Finally, they touch briefly on the issue of remedies, which is what type of relief a person can get by bringing these types of cases.

Chapter 10

The Attorney–Client Relationship

Amber D. Farrelly

Amber D. Farrelly, J.D., is a practicing criminal defense attorney licensed in the State of Texas and the U.S. Western District Federal Court. Amber specializes in Deaf clientele and is a BEI court-certified American Sign Language (ASL) interpreter. Beginning in 2009, she has worked with the Innocence Project, the Innocence Project of Texas, and the Texas Civil Rights Project. In 2010, Amber teamed with the Conviction Integrity Unit in Dallas County where she testified as an expert witness in the Stephen Brodie case—the first and only Deaf person exonerated in the United States. She continues to consult and testify as an expert on numerous cases involving Deaf individuals and promotes Deaf rights through interpreter presentations and workshops.

In Chapter 10, Ms. Farrelly discusses not just the role of the attorney and client, but the importance of the attorney–client relationship in terms of diligent representation and trust between the two. Ms. Farrelly gives the contextual background and history of the right to counsel as a criminal defendant in the U.S. justice system and how that right has evolved today. Ms. Farrelly discusses the complex duty of the attorney in representing clients and ensuring the right of due process and access to counsel through interpreters for Deaf persons today.

The chapter expands on the nuances of representing deaf clients and the various roles that interpreters play in the criminal justice system. The chapter explains the difference between confidentiality and privilege and what that means to both the client and the interpreters involved. Finally, Ms. Farrelly’s chapter discusses the special case of the incompetent client. In this section, both mental and linguistic competency are discussed, including the implications of these situations under the law.

While most are aware that policing in the United States was originally developed and later honed to control Black/Indigenous peoples, most are unaware that disabled people (and those labeled disabled) have also always been primary targets of policing and carceral systems. Half of all people killed by police annually are disabled, and disabled people are similarly grossly overrepresented in U.S. jails, prisons, immigration, and youth “detentions.” Yet people rarely view the crisis of mass incarceration through a Disability Justice lens.

Chapter 11

Disability Justice in the Age of Mass Incarceration

Talila A. Lewis

In chapter 11, Talila Lewis provides a comprehensive examination of the inequities faced by disabled people affected by the criminal legal system, focusing on deaf and other disabled people who live at the intersection of other marginalized identities (e.g., disabled people who are Black or otherwise negatively racialized, low/no income, Trans/GNC, incarcerated, etc.).

Lewis argues that racism, classism, ableism, and other oppressions intersect to shape how marginalized people are made vulnerable to surveillance, criminalization, policing, incarceration, and more. As a multiply-marginalized disabled abolitionist attorney, educator, and organizer, and the volunteer director of the cross-disability nonprofit organization HEARD, Lewis brings to the fore experiences of a group that has been largely invisibilized in debates about the criminal legal system and calls attention to the complex ways that structural and systemic inequities form and inform each other.

Lewis also examines and critiques current trends in advocacy by and for disabled people, focusing in particular on advocacy undertaken by resourced mainstream disability rights. Lewis offers strategies for advocacy that are guided by and rooted in anti-racist, anti-ableist, and anti-capitalist principles that challenge the status quo by building solidarity within and across identities, communities, and movements. Lewis convincingly argues that the massive expansion of the prison industrial complex cannot be properly understood without an intentional centering of disability and ableism nor can it be successfully defeated without an intentional integration of Disability Justice into all movements for social justice including prison abolition.

Chapter 12

Deaf People in the Criminal Justice System: Concluding Thoughts

Debra Guthmann and Gabriel I. Lomas

In Chapter 12, Debra Guthmann and Gabriel Lomas synthesize the discussions and recommendations of key points that the authors of each chapter have brought up throughout the book. Dr. Guthmann and Dr. Lomas also summarize some of the key themes that are discussed, including accessibility needs; gaps regarding data collection and the need for more research; additional training for attorneys, court personnel, and prison staff; the need for more qualified sign language interpreters, including CDIs who provide services in court, prison and juvenile facilities; the school-to-prison nexus; addiction and mental health issues; wrongful incarceration; and the need for more advocacy for this population. They conclude the chapter by acknowledging the limited progress in some areas that have been made, and that there is much more work related to this topic needed, including having a larger representation of deaf professionals working in criminal justice settings. They also discuss the need to change how deaf people are treated when in prison and to increase the number of trained professionals who can work with this population.