

Communications Access to Court Systems and Services

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Source of Core Guiding Principles:

U.S. Constitution: Due Process Clause

Statutes:

Americans with Disabilities Act, Title II
RCW 49.60 (Washington Law Against Discrimination)
RCW 2.42 (Interpreters in Legal Proceedings)

Case Law:

Tennessee v Lane, 541 U.S. 509 (2004)

Americans with Disabilities Act, Title II:

General prohibition against an unequal, separate benefit allows for reasonable accommodations:

“It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.”

- 42 USC § 12182(b)(1)(iii)

ADA Implementing Regulation:

“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service program or activity conducted by a public entity...In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.” (28 CFR § 35.160(b)(1992)) (*emphasis added*)

Who do you serve?

National Hearing Loss Demographics:

28 million (approx. 1 in 10 Americans)
By 2030, people who experience hearing loss will almost double
3rd leading disability among seniors
30% cannot afford hearing aids
33% deny or hide their hearing loss
7% Unaware of their hearing loss

State Hearing Loss Demographics:

People with Hearing Loss in Washington

- Over 500,000 have mild to severe loss
- Nearly 14,000 have severe to profound loss

Persons with Deaf-Blindness

- King County has one of the largest Deaf-Blind populations in U.S.

Persons with Mild to Severe Hearing Loss: Communication Issues

- Majority of persons with hearing loss do not use sign language fluently
- Each person has his/her own communication needs depending on the degree and type of hearing loss
- Hearing aid users do not always hear clearly
- 3/4ths of all people cannot lip-read spoken English with any degree of reliability

Persons with Profound Hearing Loss: Communication Issues

- Many use American Sign Language (ASL) while others use spoken or signed English, often with severe English language comprehension challenges
- Some learn sign language at an early age while others learn to sign later in life
- Some learn how to talk and lip-read and do not learn sign language.
- Some learn to sign first, then learn to talk
- Most people who became deaf before learning language read English at 4th to 6th grade level.

Interpreters in Legal Proceedings: R.C.W. 2.42.120

- (1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.
- (2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.
- (3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity

Use of Sign Language Interpreters:
Effective Communication Considerations

- Is the interpreter qualified for the assignment?
 - “Certified” does not necessarily mean “qualified”
 - Knowledge of setting-specific legal terms is essential
- Qualified Sign Language Interpreters provide ASL, Signed English, or Relay Interpreting
- Does the placement of client, court personnel, technology or interpreter allow effective communication?
 - Noise, lighting, line of sight, and location issues
- Can court personnel determine whether the client fully understands the meaning of what is communicated?
 - Is the client linguistically participating?
- Should a “counsel-table interpreter” and/or a deaf relay interpreter be involved?

Recommendations for Effective Access using Sign Language Interpreters

- Utilize certified interpreters and/or deaf relay interpreters with prior legal interpreting experience
- Appoint Counsel-Table Interpreter
- Assess whether the deaf party understands the proceedings by using open-ended questions
- Videotape the proceedings

Providing Access to Non-signers with Hearing Loss

- Assistive Listening Devices
 - FM Broadcast
 - Infrared Light
 - Audio Induction Loop
- Computer Assisted Real-time Transcription (CART)
- Oral Interpreter

