



Fact Sheet:

Accommodations in Telecommunications for Incarcerated People Who Are Deaf or Hard of Hearing

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This Fact Sheet provides an overview of the need for accommodations in access to telecommunications for incarcerated people who are deaf and hard of hearing. It describes the specific accommodations required for deaf and hard of hearing prisoners generally, with a focus on communications with people outside of prison. It then describes limitations of current telecommunications technology and the impending obsolescence of the TTY (teletypewriter) system, litigation efforts to expand access to videophones and related technology in prisons, and the legal framework for these efforts.

The Adult Prison Population Who Are Deaf or Hard of Hearing

Although reliable statistics on the number of deaf and hard of hearing people held in state and federal prisons and in local jails is lacking, a 2015 Bureau of Labor Statistics (BLS) report (citing 2011-12 data) found that 6.2 percent of prisoners (and 6.5 percent of jail detainees) have some form of hearing-related disability.¹ The total number of people incarcerated in state and federal prisons, juvenile correctional facilities, local jails, immigration facilities and Indian Country jails (in addition to a myriad of territorial prisons and civil commitment facilities) is estimated at approximately 2.3 million people.² If the BLS report figure is reasonably accurate, there are more than 142,000 people who are deaf or with hearing loss currently incarcerated in the United States.

Although the largest percentage of incarcerated people with hearing loss appear to suffer from age-related deterioration of their hearing (BLS cites a figure of 12.6 percent of prisoners over 50 years old with a hearing-related disability), the deaf advocacy organization HEARD (Helping Educate to Advance the Rights of the Deaf) has reasonably

¹ U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, “Disabilities Among Prison and Jail Inmates, 2011–12,” <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>

² Data from the Prison Policy Initiative. <https://www.prisonpolicy.org/reports/pie2020.html>

estimated that there are at a minimum tens of thousands of incarcerated deaf people across the U.S., most of whom communicate using American Sign Language (ASL).³

Accommodations for Prisoners Who Are Deaf or Hard of Hearing

Under Title II of the Americans with Disabilities Act (ADA), people with disabilities have a right to communication “as effective as” communication with others.⁴ The key to determining what aid or service is needed to communicate “effectively” is to consider the nature, length, complexity, and context of the communication, as well as the person’s normal method(s) of communication.⁵ The primary consideration is the choice of the individual involved about his or her preferred method of communication. Prisoners with hearing impairments must have an equal opportunity to participate in any program, service or activity provided in prison, which requires effective communications.

Deaf and hard of hearing prisoners have to navigate complicated prison rules and programs, and understand what is going on around them when they do not understand the language being used or hear audible alarms. Although some deaf and hard of hearing prisoners can read written English, many cannot, so for some reading a prison handbook, securing medical care, filing a grievance or understanding a disciplinary write-up may be impossible.

The most basic need for deaf prisoners who communicate with ASL is competent interpretation, allowing deaf prisoners to use ASL to communicate with corrections and medical staff and to participate in educational and other programming opportunities while incarcerated. Without adequate ASL interpreter services, deaf prisoners cannot communicate with doctors and medical providers, understand disciplinary hearings or take part in programming. The failure to provide ASL interpretation can have health impacts as well as prolong incarceration for prisoners who cannot complete programs required for their release.

Notably, according to HEARD, many departments of corrections actually ban sign language because corrections professionals incorrectly view sign language as a form of gang communication. Such rules can result in deaf prisoners being purposefully separated from other deaf prisoners even when they are housed at the same prison, and

³ HEARD “#DeafInPrison Campaign Fact Sheet,” <https://behearddc.org/wp-content/uploads/2018/11/DeafInPrison-Fact-Sheet-.pdf>

⁴ Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. Part 35, § 35.160 (2005). The Department’s Title II regulation is available at www.ada.gov/reg2.htm

⁵ See “ADA Requirements: Effective Communications,” U.S. Department of Justice, Civil Rights Division, Disability Rights Section. <https://www.clearinghouse.net/detail.php?id=17014>

prevents deaf prisoners from supporting other deaf prisoners or even from speaking with one another.⁶

For hard of hearing prisoners, communications are only marginally less complicated than for deaf prisoners communicating through ASL. While many hard of hearing prisoners do not know ASL fluently, many have sought to learn the language as their hearing deteriorates over time. Few prisons offer ASL training. Some hard of hearing prisoners can effectively communicate in writing, or through lip reading, which requires prison staff to accommodate them in different ways. Typically, many hard of hearing prisoners are denied adequate hearing aids that can facilitate communication and understanding. Many prisons only allow prisoners to have one hearing aid, even if two are needed, or limit the number of replacement hearing aid batteries to only a few in a month.

In states where broad-based settlements as a result of litigation have resulted in broad changes in the way deaf and hard of hearing prisoners are accommodated, one of the most important issues is identification of people with hearing loss, through effective audiology screening.

Finally, prisons regularly communicate important information through aural communications, that is, alarms and notifications, and verbal announcements. Cues about when to get meals, return to cells from recreation, and emergency notifications are commonly provided by sounds that deaf and hard of hearing prisoners cannot hear. Some prisons have created non-aural alarm systems (blinking lights, bed shakers), vibrating wrist watch alarms and electronic bulletin boards for facility announcements, and have instituted rules for how staff communicate information to these prisoners. Such systems are unfortunately not found in most prisons.

Incarcerated Deaf and Hard of Hearing People and Telecommunications

Since the 1960s, the predominant mode of telecommunications for the hearing impaired has been the TTY (Typewriter for the Deaf, or TDD, Telecommunications Devices for Deaf People) machine, a keyboard device that allows typed messages to be sent over copper wire telephone lines. This is the sole mechanism in the majority of prisons for deaf people to make telephone calls to family, friends and lawyers. As a mode of effective communication, the TTY is extremely limited. For deaf people who normally communicate in ASL, the TTY requires some command of written English, a language with which many deaf people have a limited proficiency. But even for those with strong written English skills, the TTY is slow, provides only for communication of short phrases with little nuance

⁶ HEARD “DeafinPrison Campaign Fact Sheet, p. 2.

or emotional content, and in general does not allow for effective communication, as mandated by the ADA.

Prisoners who are hard of hearing require accommodations like amplified telephones and captioning phones, which allow them to speak into the phone but to also receive assistance comprehending communication back. There are frequent logistical problems with placement of captioning phones in public spaces in prisons, but these can likely be addressed through internet-based options or logistical workarounds.

In more than half of state prison systems and in virtually the entire federal system, TTY is the only means of telecommunications available for prisoners whose hearing loss prevents them from using a standard telephone. Outside of prison, few if any deaf people use TTY, having moved on years ago to low-cost video communications technologies (FaceTime, videophones and the like) that allow for more natural ASL communications, and to simple texting phones. TTY devices are available for purchase only second-hand, and typically require a land-based telephone line (although internet-based TTY is also available). Indeed, a significant challenge for family members of deaf prisoners has been to even secure a means of communicating with a TTY machine to facilitate use of that very limited communications option. Almost all American deaf people use mobile phones and videophones for daily telecommunications, not TTY machines.

The Impending Obsolescence of TTY Systems

Although not yet obsolete, the lifespan of the TTY system is short. As described below, advances in digital telecommunications technology will soon displace TTY systems entirely. By 2025, the Federal Communications Commission (FCC) has stated that TTY communications in their current form will likely be completely eliminated. AT&T, one the largest telecommunications companies, has strongly advocated for a much shorter timeline.⁷

Due to technological advances and the development of digital data communication methods, such as the protocols used for the internet, it is now possible to digitize voice and transmit it as real-time data across computer networks.⁸ This has given rise to the field of Internet Protocol (IP) services, which are rapidly replacing traditional telephone network infrastructure in favor of Voice over Internet Protocol (VOIP). Unfortunately, a

⁷ “AT&T Outlines IP Migration Approach to the FCC,” *Telecompetitor*, January 4, 2010.

<https://www.telecompetitor.com/att-outlines-ip-migration-approach-to-the-fcc/>

⁸ “Teletypewriter for the Deaf Issues,” Richard Lorenzo Ray, City of Los Angeles, Department on Disability ADA Technology Access Coordinator. (Document available from NDRN upon request.)

TTY is incompatible with VOIP. Attempting to use a TTY device over a VOIP service can result in garbled text. The TTY over a VOIP line may also perform inconsistently, sometimes working acceptably and other times becoming unusable, making it effectively unusable.

With the near-total digitization of the telecommunications network, the flawed but somewhat functional TTY system is now facing total extinction. The traditional Public Switched Telephone Network (PSTN), the older, circuit-switched legacy phone network of copper wires, is being phased out in favor of broad-band and IP, that is, the digital, internet-based system. In 2016, the FCC called for the orderly phase-out of the legacy phone network as part of a national upgrade of the U.S. telephone system. According to the FCC, by 2025, all PSTN services will be switched off permanently. Many large telecommunications companies, most notably AT&T, have stated an intention to completely eliminate PSTN by the end of 2020, with no new land line installations.⁹

These developments leave deaf and hard of hearing prisoners with the potential loss of all communications with the outside world beyond mail and personal visitation. This is not a technological problem, as the solutions to this potential loss of communications access for deaf and hard of hearing prisoners (videophones, captioning telephones and other innovations) are readily available and not expensive. However, most state and federal prison systems have failed to address the need to upgrade accommodations for prisoners with hearing impairments in the digitized telecommunications world. Indeed, although the need for and benefits of videophone access for deaf prisoners, and for captioning phones and other devices for hard of hearing prisoners, has been apparent for many years, state prison systems have been extremely reluctant to address this need, and the federal Bureau of Prisons (BOP) in particular has aggressively resisted litigation efforts to require videophone in BOP facilities.

State Prison Systems That Provide Videophones

In 2010, Virginia became the first state to provide videophones in its prison system, as well as providing a host of other accommodations for deaf and hard of hearing prisoners, reaching a settlement in the *Minnis v Johnson* litigation.¹⁰ The case was filed by the Washington Lawyers' Committee for Civil Rights & Urban Affairs (WLC) in January 2010 and settled by the end of the same year. The adoption of videophones and related technology came as part of a broad-based settlement that addressed telecommunications

⁹ Id.

¹⁰ *Minnis v Johnson*, 1:10-cv-00096 (E.D. Va.). For a summary of that litigation and links to pleadings, see the summary on the Civil Rights Litigation Clearinghouse site. <https://www.clearinghouse.net/detail.php?id=13828>

issues and also a wide range of other accommodations like visual alarms and notifications, expanded access to ASL interpreters and expansion of the role of the Department of Corrections' ADA Coordinator.

Since the 2010 *Minnis* settlement, more than a dozen other states have reached similar litigation settlements or provided accommodations as the result of sustained advocacy, although few have produced the kind of comprehensive services now found in the Virginia system. Advocates have secured prison videophone access through litigation and/or advocacy in state prison systems in Maryland (2015),¹¹ Kentucky (2015),¹² Illinois (2018),¹³ California (2017),¹⁴ Michigan (2018),¹⁵ Florida (2017),¹⁶ Idaho (2015),¹⁷ Texas (2018),¹⁸ Louisiana, Ohio, Wisconsin (2014), South Dakota and Minnesota (2020),¹⁹ usually along with other reforms to accommodate deaf and hard of hearing prisoners. A smaller number of local jails have also made videophones available.

The Colorado state prison system provides videophones, as the result of litigation brought on behalf of a hearing prisoner with a deaf family member, but the state has not provided additional accommodations for prisoners with hearing impairments (although current litigation seeks to secure additional accommodations). Active litigation is underway in Tennessee (led by Disability Rights Tennessee) to secure comprehensive accommodations for deaf and hard of hearing prisoners, including videophone access.²⁰

The BOP has aggressively opposed efforts to secure videophone access for a man detained under the Adam Walsh Act,²¹ although it had previously provided videophone access to at least two prisoners in the BOP system.²² Videophones are generally not

¹¹ *Jarboe et al v. Maryland Department of Public Safety and Correctional Services (DPSCS), et al*, U.S. District Court of Maryland, Case No. 1:12-cv-00572 (D. Md). For a summary of that litigation and links to pleadings, see <https://www.clearinghouse.net/detail.php?id=14367>

¹² *Adams & Knights v Kentucky*, 3:14-cv-00001-GFVT (E.D. Ky).

¹³ *Holmes v. Baldwin*, No. 11-cv-2961 (N.D. Ill.).

¹⁴ *Armstrong v Brown*, No. 4:94-cv-02307 (N.D. Ca).

¹⁵ *McBride v Michigan Department of Corrections*, No. 2:15-cv-11222 (D.C. E.D. Mi).

¹⁶ *Disability Rights Florida v Jones*, No. 4:16-cv-47 (N.D. Fl). (See link for copy of settlement) <https://www.floridajusticeinstitute.org/wp-content/uploads/2017/08/Settlement-Agreement-no-exhibits-searchable-07148878xB3B17.pdf>

¹⁷ *Smith v. Reinke*, 1:12-cv-00030 (D.C. Idaho).

¹⁸ <https://www.lexology.com/library/detail.aspx?g=81b82d31-ff19-4e30-a84f-74ff82987d1f>

¹⁹ *Rinkel et al v Minnesota Dept. of Corrections*, No. 62-CV-19-1165 (Ramsey County District Court)

²⁰ *Trivette v Tennessee Department of Correction*, No. 3:20-cv-00276).

²¹ The federal Adam Walsh Child Protection and Safety Act of 2006 mandated, among other things, indefinite civil commitment of people with prior sex-related offenses in federal prison.

²² *Berke v US Bureau of Prisons*, 1:12-cv-01347 (D.C. D.C.2012). For a copy of the complaint, see <https://legaltimes.typepad.com/files/berke-complaint.pdf>; *Yeh v. United States Bureau of Prisons* (3:18-cv-00943 (M.D. Pa.)). For a copy of the complaint and litigation documents, see

available in any BOP prison facility, and other accommodations for prisoners who are deaf or hard of hearing are typically lacking in BOP facilities.

P&A Efforts to Address Telecommunications issues for Deaf and Hard of Hearing Prisoners

Several P&As have taken on the issue of securing accommodations for prisoners who are deaf or hard of hearing. A few (but not all) of these include:

- In 2020, the Minnesota Disability Law Center as co-counsel settled a case in state court against the Minnesota Department of Corrections, *Rinkel v Minnesota Department of Corrections*.²³ The Department agreed to provide videophones in the housing units of all prisoners who are deaf and to provide interpreters for classes and program, captioned materials on the I-Pad tablets it makes available to prisoners, and to take appropriate supervisory action when guards do not use pagers to communicate announcements. It also agreed to conduct communication needs assessment of all current and future prisoners who are deaf.
- In 2019, litigation brought by Disability Rights Michigan (then known as Michigan Protection & Advocacy Service (MPAS)) as co-counsel, *McBride v. Michigan Department of Corrections*,²⁴ resulted in one of the most comprehensive settlements on behalf of deaf and hard of hearing prisoners. The *McBride* settlement will bring broad-based accommodations to the Michigan prison system, including videophones, ASL interpretation for programming, visual notifications and other accommodations.
- In 2018, prisoners in Illinois achieved an important settlement securing a similar broad range of accommodations for deaf prisoners in *Holmes et al. v. Godinez et al.*,²⁵ including videophones. The case was co-counseled by Equip for Equality, the Illinois P&A. The agreement calls for hearing tests to identify prisoners who are deaf or hard of hearing; hearing aids when recommended; ASL interpreters for programs; visual notifications; remote ASL interpreting for medical visits; and videophones in all facilities with deaf prisoners.
- In another notable settlement involving probationers who are deaf or hard of hearing, Disability Rights Louisiana (then known as the Advocacy Center of

<https://www.clearinghouse.net/detail.php?id=17014>; See “Fourth Circuit Hears Debate Over Prison Video Calls for Deaf,” *Courthouse News* (October 29, 2020) for a good summary of this litigation.

<https://www.courthousenews.com/fourth-circuit-hears-debate-over-prison-video-calls-for-deaf/>

²³ *Rinkel v Minnesota Dept. of Corrections*, 62-CV-19-1165 (Ramsey County District Court).

²⁴ Case No. 2:15-cv-11222 (E.D. Mi).

²⁵ 11 C 2961. (E.D. IL).

Louisiana) served as co-counsel in an important case involving deaf parolees and probationers, *Levy v. Louisiana Department of Public Safety and Corrections*.²⁶ Although state prisoners in Louisiana already had access to videophones and ASL interpretation services, hearing-impaired probationers and parolees lacked effective communications. The *Levy* settlement in 2019 provided for, among other accommodations, qualified interpreters for meetings between parolees and probationers, and supervision staff.

The Right to Effective Communications under the ADA

People with disabilities have a right to communication “as effective as” communication with others under the ADA.²⁷ The key to determining what aid or service is needed to communicate “effectively” is to consider the nature, length, complexity, and context of the communication as well as the person’s normal method(s) of communication.²⁸

Potential defenses to claims of ADA violations in this context are similar to defenses in other settings, the concepts of “fundamental alteration” or an undue burden on defendants.” As noted by the U.S. Department of Justice, “If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide an alternative aid or service that provides effective communication if one is available.”²⁹

Some state defendants have argued that imposing effective communications requirements “fails to accord them the deference due to a correctional facility’s safety judgments,” citing unspecified safety and security concerns.³⁰ In particular, in Michigan defendants argued that TTY provides “meaningful access” to telecommunications, without the potential (though unstated) threat to the safety and management of its prisons. Yet the *McBride* court found otherwise, noting “[p]laintiffs have shown that, in reality, [teletypewriters] do not enable them to communicate effectively with persons outside of prison, much less provide them with telecommunications access equal to that of hearing

²⁶ *Levy v. Louisiana Department of Corrections*, 3:16-cv-00542 (M.D. LA).

²⁷ Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. Part 35, § 35.160 (2005). The Department’s Title II regulation is available at www.ada.gov/reg2.htm

²⁸ See “ADA Requirements: Effective Communications,” U.S. Department of Justice, Civil Rights Division, Disability Rights Section. <https://www.clearinghouse.net/detail.php?id=17014>

²⁹ *Id.*

³⁰ Citing *Bell v. Wolfish*, 441 U.S. 520 (1979) to support this position.

prisoners.”³¹ Further, the *McBride* Court noted, “[d]efendants do have still failed to explain why the safety policies applied to telephone conversations ‘would not be as effective at addressing risks associated with video transmissions.’”³² As in several similar cases, the *McBride* Court found that a TTY does not provide effective communication.

With the coming elimination of TTY more broadly, legal debates regarding TTY as “effective communication” are becoming moot. Moving forward, there are simply no alternatives to providing videophones (or similar video-based technology) for deaf prisoners who lack any other telecommunications options. In prisons where currently only TTY is available for deaf prisoners’ communications with the outside world, prisoners who communicate with ASL will soon have no telecommunications options available to them without access to videophone technology.

In addition to the ADA, the First Amendment to the U.S. Constitution is a further basis for mandating effective means of communication with individuals outside the prison walls, with prison officials effectively preventing such communications.³³

Beyond vague security concerns, which courts can readily reject, defendant correctional systems more often argue that some older facilities lack sufficient infrastructure to install appropriate telecommunications equipment, or lack sufficient bandwidth to make digital communications operable, requiring fundamental alterations and financially burdensome investments to provide effective communications. Defendants cite problems like thick walls that may block Wi-Fi signals or interfere with internet access, but these objections are becoming less viable over time. Every prison system has Internet access, although coverage may be spotty in some locations. Indeed, for several years many prison systems have provided limited email and internet access to prisoners, and staff generally now have wide access to the Internet.³⁴

Advocates can address these kinds of objections through practical negotiations around how to implement physical modifications to facilities to address architectural and other obstacles. In most states where videophones and other accommodations are provided, deaf prisoners are housed together (at the discretion of individual prisoners) or in the same facility, or in a small number of facilities where architectural or technological issues can be readily addressed. Congregating deaf and hard of hearing prisoners has the added benefits of both facilitating other services (like ASL interpretation and

³¹ *McBride v Michigan Department of Corrections*, 294 F.Supp.3d 695, 699. (See <https://incarcerationlaw.com/documents/Featured-opinions/McBride-v-MichiganDepartmentofCorrections.pdf> for the full docket.)

³² *Id.*

³³ See for example the complaint in, *Jarboe v Maryland Dept. of Corrections*, 1:12-cv-00572 (N.D. Md).

³⁴ “The case for Internet access in prisons,” Ben Branstetter, *The Washington Post* (February 9, 2015).

programming), and building mutually beneficial relationships among prisoners with similar disabilities and improving interpersonal communications.

Further NDRN Resources and Assistance for P&As Advocating on Behalf of Prisoners who are Deaf or Hard of Hearing

On May 21, 2020, NDRN produced a webinar, “Communications Access for Prisoners Who Are Deaf and Hard of Hearing,” with participation from Chris Davis of the Michigan Protection & Advocacy Service, Inc., Amy Robertson of the Civil Rights Education and Enforcement Center, and Richard Ray, a telecommunications expert. That webinar is available on the TASC website.³⁵

NDRN can also provide sample pleadings and recommendations to potential experts for P&As interested in litigating these issues, as well as consultation on planned litigation. There is substantial expertise in this area within the P&A network, and we can help direct you to those who may be most helpful in your efforts.

³⁵ <https://www.tascnow.com/resource/communications-access-for-prisoners/>