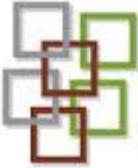


# Legal Interpreter Training

Curriculum Toolkit for Trainers

## Deaf Interpreters: Deaf Minors



 **NCIEC**  
National Consortium of Interpreter Education Centers

Legal Interpreter Training: Curriculum Toolkit for Trainers

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# Deaf Interpreters: Deaf Minors and Interpreting Considerations

## *Overview of Module and Related Units*

### **Overview**

This module covers the various legal settings in which Deaf minors are involved and that typically require the provision of a Deaf interpreter. This module will explore settings which are frequently encountered by Deaf interpreters such as the juvenile justice system, the child welfare system and some family law settings which, at times, involve Deaf minors.

### **Purpose**

The purpose of this module is to provide an overview of those settings in which Deaf minors can be expected to participate and to present an overview of linguistic considerations when interpreting for Deaf minors. Deaf minors sometimes exhibit less standardized language patterns particularly in high stress settings. Interpretation through a native Deaf interpreter can be more effective than an interpretation rendered solely through an interpreter who can hear. Children also exhibit emerging language patterns that may cause difficulty when working with an interpreter who can hear. Many hearing interpreters have little or no exposure interacting with young children. To interpret effectively, Deaf interpreters should be familiar with the vocabulary and basic proceedings involving minors, such as in the juvenile adjudication system, neglect and abuse proceedings, and family law matters such as divorce and custody cases. Other proceedings involving minors peripherally include proceedings involving the termination of parental rights. Participants will use in-class and online discussions, papers and video logs to critically assess various matters involving Deaf minors.

## Competencies

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

## Anticipated Outcomes

Upon completion of this module, learners will be able to:

- Identify the linguistic developmental characteristics of Deaf minors at various age groups;
- Describe the various systems in which Deaf minors might interact with a court and the legal system and have a general understanding of basic processes involved with the systems;
- Recognize and use the vocabulary that may commonly be encountered in those settings and develop video log dictionaries for specific legal terminology;
- Recognize the specific processes, procedures and unique vocabulary that will be encountered in the abuse and neglect justice systems;
- Identify the types of family law matters that require a Deaf interpreter and the processes, procedures and unique vocabulary that will be encountered.

## Unit Titles and Sequence

- Unit 1: The Development of Language in Deaf Minors
- Unit 2: Deaf Youthful Offenders
- Unit 3: Parenting Deaf Minors – When the Courts Step In
- Unit 4: Family Law Matters

# *Unit of Learning 1: The Development of Language in Deaf Minors*



## **Related Competencies**

- Interpreting Knowledge and Skills
- Court and Legal Interpreting Protocol
- Professional Development

## **Purpose**

The purpose of this unit is to provide an overview of the linguistic characteristics demonstrated among different age groups and backgrounds. In this unit, learners will discuss the implications of emerging language on a Deaf child's ability to relate a story in a legal environment. The unit is designed to provide some insight into an area of study in which little empirical research exists. From the available research on the development of language in children who can hear and the limited research on the development of language in Deaf minors, several themes can be identified concerning the strategies a Deaf interpreter can use to communicate effectively with Deaf minors. This unit will also provide insight into adolescent language development and strategies for interviewing and interacting with adolescent Deaf consumers.

## **Objectives**

Upon completion of this unit, learners will be able to:

- Identify those characteristics of emerging language skills in Deaf minors and identify which characteristics can be predicted to appear at various ages and backgrounds.
- Describe the difference between academic ASL and social ASL and to be able to describe features of each.
- Identify strategies and tools that can be used by the Deaf interpreter to assist in providing a more effective interpretation when working with Deaf minors at various stages of language and experiential development.

## Key Questions

- How is role taking or depiction used differently in young Deaf minors than it is in older Deaf minors?
- What are the differences between social and academic ASL?
- What is the role of eye gaze and other referents in the storytelling of young Deaf minors?
- At what age does affect typically become apparent in Deaf minors?
- What tools or strategies are available to Deaf interpreters to prepare for interpreting with young Deaf minors?
- What tools or strategies are available to Deaf interpreters which can be used while interpreting for young Deaf minors?

## Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1: Deaf Interpreters: Interacting with the Players

## Unit Plan and Activities

- During this unit, learners will view the videotaped lecture and PowerPoint materials regarding the development of Deaf minor's language prepared by Amy Hile, Ph.D., as well as other course PowerPoint materials.
- Learners will review sample discourse from Deaf minors and identify features of emerging ASL.
- Learners will examine the literature regarding the differences between interpreting for adults and for Deaf minors.
- Learners will create a tool box of items to be used in assisting the interpretation with Deaf minors.
- Learners will discuss the effect of the speech versus sign language debate may have on interpreting for Deaf minors in legal settings.
- Learners will prepare for and interpret a mock Guardian ad Litem meeting between an attorney and a Deaf teen.

## Discussion

Deaf minors present complex linguistic challenges for ASL interpreters. There have been few studies to date of the characteristics of language, but for any child, language development will depend upon their familial, social and educational background. Younger children present even greater challenges. Children, depending on their age, may not have the ability to talk about events that occurred in the past or to conceptualize and discuss events that may happen in the future. This can present challenges for the Deaf interpreter.

The NCIEC Deaf Interpreter Work Team published a set of competencies for Deaf interpreters in 2010. (Toward Effective Practice 2010). As a part of the Deaf interpreter's language, cultural and communication competency is the ability to be creative and flexible "in the use of alternative visual communication strategies to convey complex concepts to consumers including drawing, mime, props, etc." (Toward Effective Practice, p. 4, rev. 2010). Deaf interpreters must have honed this competency area and be able to implement creative and flexible visual strategies in working with young Deaf minors in legal settings.

Props and/or intensive preparation may be required in order to set up the context in which an interviewer can even ask a question of a Deaf child. For example, the question "where did it happen in the building" might necessitate the Deaf interpreter being able to first review a visual picture of the layout of the building. The Deaf interpreter may need to draw the physical premises to help orient the child to the line of questioning. Questions may need to be asked that come from the child's experience base to obtain meaningful responses. For sexual assault cases involving young Deaf victims, anatomically correct dolls might be utilized in a play room setting by an investigator to draw out the child's story. Deaf interpreters have to be prepared to get down on the floor with the child witnesses and be prepared to think outside the box and become creative to draw information out of the child.

At the same time, caution is in order. The NCIEC Deaf Interpreter Work Team recognized that, at times, the amount of negotiation for meaning might be so extensive as to limit the usefulness of portions of the interpretation for the stakeholder. (Toward Effective Practice, p.5, rev.

2010). In essence, in working with a child with limited ASL proficiency, it may be difficult to ascertain what part of the interpretation derives from the interpreter's work and what part was initiated by the child. Deaf interpreters are aware of the potential ramifications of these 'imprinted messages' and are attuned to recognizing when it may be occurring and calling it to the attention of the interlocutors. (Toward Effective Practice, p.6, rev. 2010). This type of leading questions approach may be the only method available to establish communication with minors who have emerging language, but it must be used carefully and the Deaf interpreter must be able to articulate when, why and how it may be occurring in the interaction.

In certain legal settings, the professional must interview young children to ascertain, for example, whether charges of abuse or neglect are founded. In the Child Protective Services field, interviews are framed through the lens of child developmental considerations. Children of pre-school age think in a concrete manner and cannot process abstract concepts such as irony, metaphor or analogy. Their speech and thinking patterns are not organized logically or temporally. Their narratives tend to ramble and maintain little cohesion which can affect the interview process. It has been suggested that because preschool age children do not think chronologically, that dates can be drawn out in the interview by using reference points, such as birthdays or holidays, to place the time of an incident. Other considerations in interviewing young children include that they may not understand the difference between a truth and a lie; they may be ego centric thinking the world revolves around themselves; their attention span may be extremely short; and, they may be afraid to talk with an unfamiliar person such as an interpreter present. (Child Protective Services: A guide for caseworkers, pp. 61-62, 2003).

In general, when adults interact with Deaf minors, the adult's manner of speaking is modified to adapt to a younger listener. Sometimes termed Child Directed Speech, this manner of speaking has counterparts in the register and style used by Deaf interpreters when working with Deaf minors. Child Directed Speech relies heavily on prosody to help the child understand the adult's message. According to Schick, prosody is used by teachers to organize language into units that are easier for the child to perceive. (Schick, B., 2001). Deaf Interpreters should be cognizant of

incorporating prosodic features in the interpretation to make the message easier for the Deaf child to perceive.

Understanding the cognitive development of adolescents is also important for Deaf interpreters. Certain linguistic approaches have proven to be ineffective in dealing with hearing minors confronting the legal system, and strategies used by legal practitioners can inform the Deaf interpreter's approach. For example, legal practitioners suggest that adolescents 'may have an immature understanding of time and may have difficulty constructing narratives.' (Dow. L., 2006). Legal professionals suggest that questions be framed simply and clearly and that redundancy is helpful. Every verb should be attached to a noun and names and places should be repeated often. In sum, Deaf interpreters need to be able to recognize and create strategies to accommodate the linguistic, emotional and cognitive developmental characteristics of Deaf minors at various ages.

What's next: Learners should be directed to view the presentation by Dr. Hile regarding language development in Deaf children.

### **Activity 1 – Identifying features of developing ASL**

Perform internet research and identify at least two samples of Deaf minors around the age of 10.

Concept review (in classroom or video log posting)

1. Reflect upon the points made in the Hile lecture regarding developing language.
2. Identify those characteristics that were consistent with the samples you located on the internet.
  - a. Do you agree with Hile's conclusions?
  - b. Are there other attributes of emerging ASL that you would add to her categories?
  - c. If so, describe those attributes that you found in addition to Hile's categories.

### **Activity 2 – Adults v. minors: Similarities and differences**

Concept review (though in classroom or video log posting).

1. Read the article Interpreting for Children: How it's different. Brenda Schick. (Schick, 2001) and review GAL segment of Deaf

- interpreters interpreting for an attorney client interview with a Deaf pre-teen.
2. Identify by time stamp those sections of the Deaf interpreter's work where he or she is using Child Directed Speech as described by Schick.
  3. In the examples identified in #2 above, how is the Deaf interpreter's prosody different with the child than would be with an adult.
  4. Record your findings in a video log and bring to class to discuss in small group.

### **Activity 3: Interpreting strategies with Deaf minors**

Concept review (though in classroom or video log posting).

1. After reviewing Hile's lecture and reading Solow, *Interpreting for Minimally Linguistically Competent Individuals*, 1998, discuss those artifacts that have been suggested might be used as tools in interpreting and preparing to interpret for young Deaf minors.
2. [Note to instructors – the term MLS or MLC has been out of favor among Deaf interpreters, and this should be noted to students. The concepts presented in the 1998 article are still relevant and useful with the disclaimer about the term. Currently, some Deaf instructors talk about highly visually oriented individuals or Deaf people with non-standard signing or unique language skills.].
3. Create a tool box of items that could be used in interpreting with young Deaf minors.
4. Create an index for the tool box and share the index with your peers in class.
5. In small groups compare tool box items with your peers and discuss the advantages of each and the settings in which each would be valuable.

### **Activity 4 – Effect of Cochlear Implant on Language Development**

Concept review (though in classroom or video log posting).

1. Review the article, *Language Acquisition for Deaf Children: Reducing the harms of zero tolerance to the use of alternative approaches*. Humphries, et al. *Harm Reduction Journal* 2012, 9:16.

2. Discuss in class how this 'either or approach' to the speech versus signed language debate can affect interpreting for Deaf minors in court and legal settings.

## Activity 5 – Practical applications

1. View the clips of Team 1, Trenton Marsh and Jennifer Storrer and Team 4, Christopher Tester and Natalie Atlas interpreting for the GAL and the Deaf pre-teen.
2. Discuss whether any of Hile's characteristics of developing language were used by Deaf child. If so, which were present and which were not?
3. Reflect on the use of language by each Deaf child and discuss in small groups your observations.
  - Note any features that might present challenges for the Deaf interpreter.
  - Note any instances of Child Directed Speech used by the interpreters.
  - Were there any instances of unique prosodic features used that you noticed?

## Assessment

Formative assessment:

- Student responses to teacher's in-class or posted questions.
- Student activity responses presented in small group or through video reflections, observations or creation of tools and lists.
- Paper or video log assignments:
- Toolbox of items/props to use when working with younger Deaf minors.

## Resource Materials

- PowerPoint from course materials.
- Child Abuse and Neglect User Manual Series. (2003). *Child Protective Services: A guide for caseworkers*. U.S Department of Health and Human Services. Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect. Washington, D.C.

- Dow, Lisa L. & Behrman, Hillary. (2006). The Myth of Reasonableness: Working successfully with Adolescent Clients and People with Cognitive and Mental Health Disabilities. Presentation at Equal Access to Courts for Persons with Disabilities. Seattle University School of Law and Washington Protection and Advocacy System. Presentation edited for length 12/28/13.
- Humphries, et al. *Harm Reduction Journal* 2012, 9:16.
- Neumann Solow, Sharon. (1998). Interpreting for Minimally Linguistically Competent Individuals, in *The Court Manager*.
- Nilsen, Anne Birgitta (2013). Exploring interpreting for young children. *The International Journal for Translation and Interpreting*. Vo. 5, No. 2. DOI: ti.105202.2013.a02.
- Schick, Brenda. (2001). How is interpreting for Deaf children different. SESA Fall 01 Reference Shelf.

# *Unit of Learning 2: Deaf Youthful Offenders*



## **Related Competencies**

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

## **Purpose**

Frequently, Deaf interpreters are retained when a Deaf minor is charged with a delinquent (criminal) act. Hearing interpreters face immense challenges particularly if they have little to no experience interacting conversationally with Deaf adolescents or children. In these high stakes settings where Deaf minors may face the loss of their liberty or the removal from the family home, a Deaf interpreter is essential to provide the critical link to meaningful access to justice. The purpose of this unit is to examine in some detail the juvenile justice system. The types of proceedings typically encountered by Deaf interpreters will be discussed. A discussion of those delinquent acts for which a Deaf juvenile can be detained will be addressed. The unit will conclude with an examination of a certain class of acts that a juvenile can be punished for simply because of their age.

## **Objectives**

Upon completion of this unit, learners will be able to:

- Define the common delinquent acts for which a juvenile can be prosecuted;
- Define and distinguish a status offense from a delinquent act;
- Describe the procedural path that a juvenile charged with a delinquent act will go through from initiation to disposition;
- Define common legal vocabulary used primarily with juvenile offenders.

## Key Questions

- What is the goal of the juvenile justice system in dealing with juveniles adjudicated as delinquent?
- What are the major parts of a case against a juvenile?
- In what kinds of cases can a juvenile be tried as an adult?
- What is the difference between a delinquent act and a status offense? In what ways does the punishment for each differ?
- How is vocabulary used in the juvenile justice system differently than in the criminal justice system?
- What benefit can a Deaf interpreter add to ensuring the goals and purposes of the juvenile justice system are attained?

## Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1. Deaf interpreters: Interacting with the Players
- Unit 1: The Development of Language in Deaf Minors

## Unit Plan and Activities

- Learners will read National Criminal Justice Reference Service. Office of Justice Programs. (1999). Juvenile Offenders and Victims: 1999 National Report. Chapter 4: Juvenile justice system structure and process. Pp 85-109 to get an overview of the juvenile justice system.
- Learners will research the differences in the juvenile justice system and the adult system and present their findings in class.
- Learners will explore the structural and vocabulary differences between the adult and the juvenile system through internet research.
- Learners will research and analyze the Constitutional rights afforded to youthful offenders and compare and contrast those with the Constitutional rights afforded adults.

## Discussion

Juvenile justice systems are a product of state law. Even though the United States Constitution mandates some baseline protections, those protections are enforced through processes created by the state. Hence the processes within each state will be similar, yet the vocabulary will vary. Deaf interpreters who understand the underlying Constitutional protections will be in a better position to interpret for Deaf minors regardless of the state in which they practice. Through a series of Supreme Court cases in 1960s, some of the Constitutional protections enjoyed by adults were afforded to juveniles. While each state must incorporate those Constitutional protections, how the protections are implemented and what they are called will vary from state to state. With that caveat, there are some common themes and protections among the state systems that can be discussed generally.

Juvenile justice is a subsection of criminal law applicable to people under a certain age, usually 18, who are not considered old enough to be held fully responsible for criminal acts. Historically, children below ‘the age of reason’ (usually age 7) were considered incapable of forming the intent necessary to engage in criminal conduct and were exempt from prosecution and punishment.

Juvenile court proceedings are not fully criminal in nature; rather, they are quasi-civil proceedings and may be confidential depending on the jurisdiction. The primary objective of the juvenile justice system is to rehabilitate the youthful offender, but prevention and treatment are also important goals of the juvenile justice system.

When a minor violates the law, the act is called a delinquent act, unless the state has chosen to prosecute the child as an adult for a serious offense. There is also a category of offenses, called status offenses, that a minor can be charged with which an adult cannot. For example, skipping school, violating curfew, or running away from home are all examples of status offenses, punishable only because of the age of the offender. Generally, status offenders cannot be detained in an adult correctional facility; rather they must be housed and transported apart from adults. Sentencing is also different in the juvenile justice system. Many states have juvenile justice statutes permitting the court to retain jurisdiction

over status offenses, abuse and neglect and dependency matters until the child reaches 20, regardless of the age of majority in the state.

In many states, a specialized court or division has exclusive jurisdiction over crimes committed by juveniles. In some states, for particularly serious crimes, the state is required by statute to charge the juvenile as an adult. In some states, for serious crimes the criminal court and the juvenile court share jurisdiction and the prosecutor may decide in which court to file the case. If a prosecutor feels that a case filed in juvenile court is more properly heard in criminal court because of the nature of the offense, the prosecutor will file a waiver petition asking the juvenile court to transfer the case to adult criminal court. Likewise, if the case was filed in adult court and the juvenile's attorney may want to transfer it back to juvenile court, the proceeding is called a reverse waiver hearing. As a result, Deaf interpreters working with Deaf minors might be working in the general criminal system or in a specialized juvenile division.

In any event, there are procedural and substantive differences in the processing of juvenile cases due to the historical benevolent goal of rehabilitating youthful offenders. Deaf interpreters should be familiar with the unique terminology used to describe juvenile procedural and substantive processes. The terminology used in juvenile proceedings is intended to be less harsh than in criminal courts because the system's goal is to rehabilitate, not punish, the offender. Hence, to begin a case, the state petitions (charges) the juvenile through a court supervised intake procedure rather than the more adversarial prosecutorial mechanisms of a grand jury indictment or the filing of a felony information.

Many cases are diverted out of the system by law enforcement (giving a stern lecture) or by an informal disposition which essentially requires the minors to admit to the act and then be issued a period of supervision (probation). The trial in a juvenile proceeding is called an 'adjudication' and sentencing is termed a 'disposition.' If a juvenile answers the charge (pleads), it is to either admit involvement (guilty) or deny involvement (not guilty) to a delinquent act (crime). Admitting involvement is the same as the entry of a guilty plea in adult court.

The dispositional process (sentencing) focused on rehabilitation and treatment and could continue to the age of majority which may be longer than the sentence an adult could receive for the same offense in criminal

court. A wide variety of options other than detention exist in juvenile justice cases including probation, community based services, counseling, etc., depending on the individual and social factors presented by the minors, the severity of the offense and the offense history. The concept of parole in the adult system after one is released from incarceration is termed 'after-care' in many juvenile justice systems.

## **Activity 1 – Dictionary Development**

Concept review (in classroom or video log posting)

1. Review vocabulary lists from the course content (Maryland Court Interpreter Manual and Superior Court of Arizona Maricopa County).
2. Discuss in small groups the meaning of the various terms. Discuss which terms relate to status offenses and which relate to the delinquency system.
3. Create ASL examples of the vocabulary in context.
4. Develop flash cards for self study or peer group study.
5. Prepare a video dictionary of possible equivalent expressions in ASL (include context where necessary).

## **Activity 2 – Juvenile Justice Court Structure**

Concept review (assigned homework, in class activity or video log posting).

1. Perform internet research and locate a diagram of your state's juvenile justice system and locate a diagram of another state's juvenile justice system.
2. Perform internet research for sample juvenile glossaries from your state and one other state (or two other states if you cannot locate one from your own state).
3. Create a short paper or video log explaining the differences and similarities in structure and terminology of each diagram to present in class.
4. This activity can be modified to an in-class activity by supplying learners with information on varying state's system and having them analyze the information in pairs. Learners can list on poster paper the similarities and differences in structure and terminology, then present their findings in large group.

## **Activity 3 – Juvenile Constitutional Rights**

Concept review (in classroom or video log posting).

1. Read Chapter 4: Juvenile justice system structure and process available in the course materials.
2. Prepare a checklist of those Constitutional rights afforded to juveniles currently and those that the Supreme Court has not yet recognize apply to juveniles.
3. In class, in small groups, compare your checklists and discuss a meaning based interpretation for each of the Constitutional rights afforded to juveniles (supply context where necessary).

## **Activity 4 – Comparing the Juvenile and Adult Justice Systems**

Concept review (in classroom or video log posting).

1. After reading Chapter 4: Juvenile justice system structure and process identify three (3) differences between the structure of the juvenile justice system and the adult system.
2. Obtain adult criminal justice system structure and process information by performing online research.
  - a. Do you agree that these differences are just and fair? If so, why? If not, why not?

## **Assessment**

Formative assessment:

- Student responses to teacher’s in-class or posted questions.
- Student activity responses presented in small group or through video reflections, observations or creation of video glossaries.
- Paper or video log assignments.

## Resource Materials

- PowerPoint from course materials.
- Maryland Court Interpreter Manual. (n.d.). Legal Terminology Juvenile Proceedings. Pp. 53-55.
- National Criminal Justice Reference Service. Office of Justice Programs. (1999). Juvenile Offenders and Victims: 1999 National Report. Chapter 4: Juvenile justice system structure and process. Pp 85-109. Available at:  
<https://www.ncjrs.gov/html/ojjdp/nationalreport99/chapter4.pdf>
- Superior Court of Arizona Maricopa County. (1998). The Terms of Juvenile Court Delinquency Proceedings. Office of Community & Media Relations.
- Wagman, Matthew, T. (2000). Innocence lost: In the wake of *Green*: The trend is clear – if you are old enough to do the crime, then you are old enough to do the crime. 49 Cath. U.L. Rev. 643.



## *Unit of Learning 3: Parenting Deaf Children – When Courts Step In*

### **Related Competencies**

- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Court and Legal Systems Knowledge
- General Legal Theory
- Professional Development

### **Purpose**

The purpose of this unit is for the learner to understand the child welfare system and the state's ability and obligation to intervene in the parenting process. Whether working with Deaf parents or Deaf minors, Deaf interpreters provide valuable assistance in navigating the child welfare system, particularly in abuse and neglect cases. In these high stakes settings, the family structure is at risk of being fractured and a native language interpretation is critical for the parents to understand the process and the procedure.

The child welfare system has the power to fundamentally alter the family structure, its reach is far broader than just determining abuse and neglect matters and supervising parenting approaches. In the extreme, if a child is in need of assistance greater than what the parents will be able to give and all reunification efforts have failed, parental rights can be terminated and the bond between parent and child forever severed. The consequences of these high stakes legal proceedings are tremendous and can have a severe emotional impact upon the participants, including the interpreters. Interpreters should have self-care strategies in place prior to engaging in these settings. In sum, this unit examines the nature of the various proceedings of the child welfare system.

## Objectives

Upon completion of this unit, learners will be able to:

- Identify the four major types of child abuse and neglect;
- State the legal definition of child abuse and neglect;
- Identify the stages that a child abuse or neglect case proceeds through from reporting to disposition;
- Describe the preconditions for termination of parental rights proceedings and the process the state must go through to place a child for adoption outside of the biological parents' care;
- Describe the emotional and psychological impact of interpreting that these settings may entail.

## Key Questions

- What is the legal definition of child abuse and neglect?
- Given the highly abstract nature of the legal definitions for abuse and neglect, how can these concepts be accurately conveyed without suggesting responses to the Deaf parties?
- What are the dangers of contextualizing concepts such as sexual assault? How can interpreters reduce the danger of leading the Deaf individual?
- What is the role of the child protective services caseworker in a neglect or abuse investigation?
- What roles do Deaf interpreters play in a neglect, abuse or dependency case?
- What are the major types of child abuse and neglect?

## Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1: Deaf Interpreters: Interacting with the Players
- Unit 1: The Development of Language in Deaf Minors
- Unit 2: Deaf Youthful Offenders

## Unit Plan and Activities

- Learners will be presented with an overview of the child welfare system including the legal definitions set forth by federal law for the various kinds of abuse and neglect.
- Learners will discuss the role of the case worker and the Deaf interpreter in child welfare cases and proper staffing of various cases.
- Learners will research literature and legal documents to create an ASL glossary of terminology related to the child welfare system.
- Learners will research abuse and neglect proceedings flow charts, termination of parental rights proceedings and state sexual offenders registries.

## Discussion

The courts intervene in parenting when there is a report of suspected child abuse, neglect or abandonment. The Federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. §5106g, as amended and reauthorized by the CAPTA Reauthorization Act of 2010, defines child abuse and neglect as, “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm.” (CAPTA 2010). Generally child abuse and neglect statutes define four major types of maltreatment by parents or caretakers including, physical abuse, neglect, sexual abuse and emotional abuse.

- Physical abuse is the non-accidental physical injury to a child inflicted by a parent or other caregiver. Examples of physical abuse include punching, beating kicking, biting, shaking, throwing stabbing, choking, hitting with a hand, stick, strap or other object, or burning. (Coordinated Response, p. 16, 2003).
- Neglect, including physical, educational or emotional, is the failure by a parent to attend to the child’s basic needs. Physical neglect is characterized by the omission of basic care such as the refusal to provide or allow needed care, a delay in providing or seeking care, abandonment, expulsion from the home, or inadequate

supervision. Physical neglect can include emotional neglect or educational neglect as is seen when chronic truancy from school is permitted, failure to enroll in school or failure to attend to special education needs is indicated. (Coordinated Response, p. 17, 2003).

- CAPTA defines sexual abuse as “the employment, use, persuasion, inducement, enticement or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution or other form of sexual exploitation of children, or incest with children.” (CAPTA, 2010). A wide range of behaviors fall under the umbrella of sexual abuse, including oral, anal, or genital penile penetration; anal or genital digital or other penetration; genital contact with no intrusion; fondling of a child’s breasts or buttocks; indecent exposure; inadequate or inappropriate supervision of a child’s voluntary sexual activities; or use of a child in prostitution, pornography, internet crimes or other sexually exploitative activities. (Coordinated Response, p. 16-17, 2003).
- Emotional abuse is conduct that impedes a child’s sense of self-worth or emotional development. Also termed psychological maltreatment it refers to “a repeated pattern of caregiver behavior or extreme incidents that convey to children that they are worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another’s needs.” (Coordinated Response, p. 18, 2003). Emotional abuse may be indicated by belittling, ridiculing, terrorizing, isolating, exploiting or corrupting, denying emotional responsiveness. Emotional neglect may include inadequate nurturing or affection, chronic or extreme spouse abuse, permitted drug or alcohol abuse, permitted other manipulative behavior such as encouraging truancy, and refusal or delay of needed psychological care. (Coordinated Response, p. 18, 2003).

The Deaf interpreter might encounter allegations of child abuse or maltreatment in a number of settings such as in juvenile court, dependency court, or as a result of a mandatory reporting incident at a

school or medical facility initiating an investigation into potential abuse or neglect.

While each state is different and will have its own processes and procedures, typically, law enforcement officers or child protective services (CPS) workers conduct the investigation once an allegation is made. Based on the investigation, CPS determines whether the child can safely remain at home. If the child involved is Deaf, interpreters will accompany the case worker and will be aligned with the state in any subsequent proceeding. Even if the child is not Deaf, it is highly recommended that Deaf interpreters should be used in these matters because of the emotional and traumatic nature of the proceedings. Particularly in major urban areas, the parents may be undereducated, live in a non-English speaking/non-signing environment, or have unique language patterns or cognitive conditions that are more accurately mediated by a Deaf interpreter. Regarding interpreter roles, the Deaf interpreters assisting in the investigation will qualify to function as the CPS table interpreter to interpret conversations with Deaf witnesses and to monitor the proceedings interpreters for accuracy. Ethically, the code of professional responsibility prohibits them from interpreting the proceedings. (Hewitt, 9).

If the CPS worker believes the child cannot safely remain in the home, then an emergency protection hearing (sometimes called a shelter care hearing) is convened. If Deaf people are present, the CPS Deaf interpreting team would provide monitoring services at the prosecution table during the hearing as well as to provide interpreting services outside of the record.

If a judge determines that a placement is needed and a case will go forward, typically a Guardian ad Litem (GAL) or a court-appointed special advocate (CASA) will be appointed to represent the best interests of the child. If the child is Deaf, then the GAL will need the assistance of a team of Deaf-hearing interpreters to conduct the best interests investigation. The CPS Deaf interpreting team would not be in a position to interpret for the GAL's investigation because their work with CPS creates a conflict of interest as they appear aligned with CPS. (Hewitt, 9).

A trial, sometimes also called the adjudicatory, dependency, jurisdictional, merits or fact-finding hearing, will be held and a judge hears the case to

determine whether the child has been neglected or abused. If the parents are Deaf and need a Deaf hearing interpreting team, then a new team will need to function as the proceedings interpreters. Normally, the child is not a participant, but each side may still want their investigatory interpreting team present to monitor the work of the proceedings interpreters.

If abuse is indicated, a dispositional hearing will be scheduled in order to determine whether the child can return home under agency supervision or be placed in the custody of the state to be placed with family in kinship foster care or other third party foster care. CPS works with the family with to create a permanency plan which sets forth requirements or conditions the parents must attain to have their children returned and court supervision terminated. Review hearings are held every six (6) months and within a year to fourteen (14) months a permanency hearing should be held.

CPS will work with the parents to create a reunification plan, but at some point between fifteen (15) and twenty-two (22) months of separation from the family the child welfare agency is required to seek a termination of parental rights or show the court compelling reasons why termination is not favored. Once a parent's rights are terminated by the court, they no longer have any legal relationship to the child and adoption proceedings may be filed.

Interpreters may be present at each and every stage of the proceedings. It is important to have a consistent team of interpreters for continuity. As noted, because Deaf children may be involved, Deaf interpreters are essential. Even if a Deaf child is not involved, however, the extreme emotional climate of a termination of parental rights hearing suggests hiring a Deaf interpreter. At any of the hearings, the parents will have the opportunity to be heard and likely will be represented by counsel. Children will be present at the permanency hearings and may be called upon to discuss their opinions and preferences with the court. This may happen in open court under oath or privately in chambers with the judge. Other stakeholders in the child's life may be there and may be asked to testify such as extended family members or other caretakers. Finally, as discussed previously, each side's investigatory agents likely have need for

their own teams for private discussions and monitoring of the proceedings interpreters' work.

Interpreters may become both emotionally and physically compromised in high stress CPS settings. Much like caseworkers, interpreters need to understand their emotional tolerance level and have strategies in place to protect their physical safety. Interpreters may be affected by vicarious trauma in interpreting in or out of court for child welfare matters.

Woodcock vividly portrays a possible explanation of vicarious trauma among ASL interpreters, stating, “[p]erhaps because sign language can make description so tangible, concrete, and vivid, witnessing or being exposed to accounts of traumatic events and intentional cruelty may impose considerable emotional and psychological strain for an interpreter who may be vulnerable.” (Woodcock & Fischer, 12).

Interpreters in CPS settings need to be cognizant of their physical safety as well. Interpreters may be required to accompany CPS workers to the homes where site visits or evaluations may take place. Interpreters should be aware of their surroundings and recognize that they may be working in environments where they are strangers to the community and the culture and might be viewed with resistance or hostility. Interpreters should ensure that when they are working in potentially dangerous environments that they are with the CPS worker at all times. According to Woodcock & Fischer,

Interpreters must make contingency plans for appointments in private homes, and precarious travel routes, such as having someone aware of the location and expected completion time. If visiting a private home to interpret for a visit by a case worker or similar appointment, arrange to arrive and leave with the case worker.

For protection from physical violence, the interpreter needs to be aware of their surroundings, exit routes, and have a safety plan. Those who frequently work in volatile surroundings should take self-defense training. Training should include recognizing early warning signs of violence. (Woodcock & Fischer, 11).

Interpreting in child welfare matters is a challenging task. Abuse and neglect proceedings are high stakes interpreting which should be staffed with highly qualified, consistent Deaf interpreting teams who are trained

not only in the substantive and procedural aspects of the system, but also in proper case staffing and self-care strategies to prevent vicarious trauma.

## Activity 1 – Child Abuse and Neglect

Concept review (in classroom or video log posting)

1. Think about the following questions and discuss them with your small group:
  - What would the role of the interpreters be in the CPS investigation process if the child were the only Deaf participant? If the parent(s) and the child were all Deaf.
  - Explain, in small group, the difference between an abuse case and a neglect case? What is your experience, if any, with either? What can you predict would be the interpreting challenges in both types of matters?
  - In a prosecution of a Deaf parent for alleged abuse of a Deaf child, how many interpreters would be needed and what would their roles involve? Prepare a diagram of a courtroom identifying all interpreters and their functions.

## Activity 2 – Dictionary Development

Concept review (in classroom or video log posting).

1. Review vocabulary list provided in the course content (Child Protective Services Glossary of Terms – New Mexico) and discuss in small groups regarding the meaning of the terms.
2. Discuss strategies for interpreting the terms (provide necessary context where indicated) and practice sight translations in group.
3. Prepare a video dictionary of possible equivalent expressions in ASL.
4. Present each video dictionary in class and compare the similarities and differences of each group's rendition.
5. Research your state for its glossary of child welfare terms. Are the terms consistent with the New Mexico sample? If not, what are the major differences. Discuss in class or prepare a video log as homework.

### **Activity 3 – Internet Research**

Concept review (in classroom or video log posting).

1. Go online and locate your specific state’s webpage showing the judicial system for handling abuse and neglect cases and allegations (this may be more than one website and the terms used may vary, i.e., dependency system in California.).
2. Find a flow chart of how the prosecution is handled in your state.
3. Compare charts in small group settings, note differences and similarities between the vocabulary and the processes.

### **Activity 4 – Interpreting abstract legal terms**

Concept review (in classroom or video log posting).

1. Using the definition set forth in CAPTA in the course discussion section, prepare an interpretation of each of the four (4) terms:
  - a. Physical abuse;
  - b. Neglect;
  - c. Sexual abuse; and,
  - d. Emotional abuse.
2. Consider interpreting these terms in the absence of a specific context. In other words, they are being used by the parties abstractly without reference to a particular identified incident. What challenges does this present for the Deaf interpreter? What strategies are available for the Deaf interpreter to use?

## Activity 5 – Considerations for consistency

Concept review (in classroom or video log posting).

1. Consider a Deaf parent aged 20 who has an infant and there has been a finding of neglect. Review hearings have been set for every three (3) months and if the parent progresses sufficiently, reviews will be set at every six (6) months for the foreseeable future. If progress continues, annual reviews will be held until the child attains majority.
2. In small group discuss the concept of consistency in the interpreting team during the neglect and review proceedings. Are there any potential down sides to maintaining the same team of interpreters? If there are, how can the interpreting team work to ensure that their work is not compromised by over familiarity, or other interpreting issues, that might arise.
3. Report findings to large group.

## Assessment

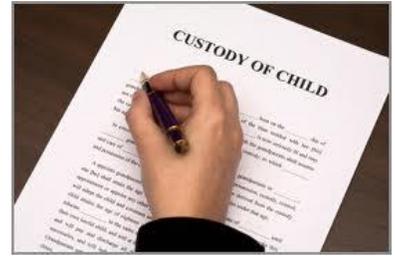
- Formative assessment:
  - Student responses to teacher’s in-class or posted questions.
  - Student activity responses presented in small group or through video reflections, observations or creation of tools.
  - Paper or video log assignments:

## Resource Materials

- PowerPoint from course materials.
- Child Abuse and Neglect User Manual Series. (2003). *A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice*. U.S Department of Health and Human Services. Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect. Washington, D.C.
- Child Welfare Information Gateway. (2013). What is child abuse and neglect? *Recognizing the signs and symptoms*. Available at <https://www.childwelfare.gov/pubs/factsheets/whatiscan.pdf> Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.

- Child Welfare Information Gateway. (2011). *Understanding child welfare and the courts*. Available at <https://www.childwelfare.gov/pubs/factsheets/cwandcourts.cfm> Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.
- Child Welfare Information Gateway. (2006). *Working with the Courts in Child Protection, Chapter 4. The Juvenile Court Process*. Available at <https://www.childwelfare.gov/pubs/usermanuals/courts/chapterfour.cfm> Washington, D.C: U.S. Department of Health and Human Services, Children's Bureau.
- Child Protective Services Glossary of Terms. (n.d.). State of New Mexico Children Youth and Families Department.
- Federal Child Abuse Prevention and Treatment Act. 42 U.S. Code §510(g), as amended, (2010).
- Hewitt, W. (1995). *Model Code of Professional Responsibility for Interpreters in the Judiciary*. Model Guides for Policy and Practice in State Courts. National Center for State Courts.
- National Criminal Justice Reference Service. Office of Justice Programs. (1999). *Juvenile Offenders and Victims: 1999 National Report*. Chapter 4: Juvenile justice system structure and process. Pp 85-109. Available at: <https://www.ncjrs.gov/html/ojjdp/nationalreport99/chapter4.pdf>
- Woodcock, Kathryn & Fischer, Steven, L. (2008). *Occupational Health and Safety for Sign Language Interpreters*. Toronto ON: Ryerson University.

# Unit of Learning 4: Family Law Matters



## Related Competency

- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Court and Legal Systems Knowledge
- General Legal Theory

## Purpose

The purpose of this unit is for the learner to understand the family law system as it relates to matters in which the Deaf interpreter might be interpreting for a minor child. The Deaf interpreter might encounter a Deaf minor in a custody and visitation case filed either as a part of a divorce action or separately. Although outside of the scope of this discussion, the issues that arise in a custody and visitation case may also be present in a less extensive manner in a hearing on a petition for an order of protection from domestic violence. In a full blown custody trial, the Deaf interpreter should anticipate that a Deaf child might be represented by separate counsel called a Guardian ad Litem (“GAL”). This unit then sets forth to describe the family law system and to examine the unique factors facing Deaf interpreters in these matters.

## Objectives

Upon completion of this unit, learners will be able to:

- Define the legal concepts of joint and sole legal custody and joint and sole residential or physical custody;
- State the fifteen (15) factors that a court considers in the ‘best interests’ test for determining custody;
- Explain the role of the Deaf interpreter in a contested custody case;
- Describe the role of a Guardian ad Litem in contested custody matters.

## Key Questions

- When parties are going through a divorce, matters can become emotionally charged. How might this climate derail parents from coming to an amicable agreement about custody and visitation of the children?
- If parents are unable to communicate with each other because of the emotional nature of the divorce, how can they have joint legal custody which requires negotiation and agreement on important matters in their child's life such as religious upbringing, educational placement and medical care? In what ways can parents put the needs of their children ahead of themselves to determine the best course of action?
- In a matter involving the custody of Deaf children of hearing parents, would a Deaf GAL be able to provide any insight into what is best for the child that a hearing GAL might not? Might a Deaf GAL face different challenges? If so, what might those be?
- What about for Deaf parents? Should there be a preference for a Deaf GAL to represent the child's interests when the parents are Deaf?
- What would be the role of the Deaf interpreter in a GAL's best interests investigation?

## Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1: Deaf Interpreters: Interacting with the Players
- Unit 1: The Development of Language in Deaf Minors
- Unit 2: Deaf Youthful Offenders
- Unit 3: Parenting Deaf Children: When the Court Steps in

## Unit Plan and Activities

- Learners will be introduced to the concepts of legal and physical custody both joint custody and sole custody.
- Learners will be introduced to the items that are typically considered in a best interests analysis for determining custody.

- Learners will research and create video glossaries for various terminology specific to the domestic relations legal systems.
- Learners will apply ethical principles discussed in this module to specific domestic relations interpreting scenarios.
- Learners will view and discuss interpreted interactions between a Guardian ad Litem and a deaf minors for an examination of the custody process and best interests standard and its explanation to the minors.

## Discussion

Family law, like nearly all law that most citizens are involved in, is heavily governed by state law. There will be fifty different judicial structures governing family law in the United States, yet the underlying processes and procedures will be similar. Interpreters should become students of their state domestic relations system in order to understand the vocabulary and the processes they will encounter.

Generally, courts prefer that when parties divorce or have a child in common, that they agree among themselves the details of the custody of the children and the visiting rights of the non-custodial parent. As long as the parents' agreement is good for the children, called 'in their best interests,' then courts will normally accept the agreement and adopt the agreement into a court order. The custody order, then, will govern the family relations until the children attain majority or until there is a substantial change in circumstances. When parents fight over the custody of their children, however, family law cases can become complicated and emotional for all parties involved, including the interpreters.

In litigating custody and visitation cases, several issues arise that have to be resolved. The child has to live with one or the other parent. The other parent has a right to visit the child. Where the child lives is called 'physical or residential' custody. It can be held solely by one of the parents, with the other parent having either liberal or restricted visitation rights, or it can be shared (joint) where the child spends time more or less equally with each parent. A court's determination on the physical/residential custody of the child will be based on a determination of a number of factors comprising the best interests of the child test. Another issue that has to be resolved in every case is legal custody which is the power to

make important decisions in the child's life such as major health care decisions, educational decisions and religious upbringing decisions. Like physical custody, legal custody can be sole or jointly shared between the parents depending on the judge's determination of how well the parties can cooperate in communication about the needs of the child.

In determining custody, courts use some or all of the following factors:

Best Interest Factors:

1. Which parent is the most suitable custodian based on character, temperament, and stability?
2. What is the child's relationship with each parent?
3. What is the educational level of each parent?
4. What child-rearing skills does each possess?
5. Does either parent have an illness that may harm the child?
6. Which parent will provide the best home environment?
7. Does the child have stronger emotional ties to one or the other parent?
8. Does the child have special needs that can be better met by one parent over the other?
9. With whom has the child been living on a regular basis?
10. What type of extended family relationships exist?
11. What is the employment status of each parent?
12. What is the financial status of the parties?
13. What is each parent's apparent motive for seeking custody?
14. Is either parent unfit to have custody?
15. Which parent is the most likely to allow the child to continue his or her relationship with the other parent and extended family?

A Guardian ad Litem (GAL) or a court-appointed special advocate (CASA) may be appointed in contested child custody matters to represent to the court the best interests of the child after an independent investigation. Not all states require that GALs also be attorneys, but many do. The GAL may serve different functions: he or she might be an advocate for the

child, might investigate the living circumstances in order to assist the court in understanding the best interests factors or might serve as a guardian. A GAL can present the child's perspective to the court, can seek the court's permission to have the child interviewed by a professional such as a psychologist, can assist in waiving any privileges between the child and any professionals, and can visit the child's school and home to gather information, among other things.

At times, in custody cases and depending on the ages of the children involved, the court might want to hear from the child privately as to their living situation, their feelings about the divorce and their desires, if known, as to which parent they would rather live with after the divorce is final. The child's wishes do not control the court's determination regarding custody; rather, the child's desires as to where he or she will live will be one factor the court considers in making a determination.

Deaf interpreters should be involved as the investigatory interpreters for the GAL and be present to assist the GAL in lodging any necessary objections, if the proceedings are interpreted for the parents. In the event that no GAL is appointed and the judge wants a private conference with the Deaf child or children, a Deaf-hearing interpreting team should provide those services.

## **Activity 1 – Best Interests of the child**

Concept review (in classroom or video log posting)

1. You have been hired to interpret an explanation to a Deaf 14 year old boy of the factors involved in the court's custody determination for physical custody. Review the fifteen (15) factors listed in the course discussion and prepare a sight translation of the factors for the Deaf child. If you made decisions based on an assumed context, state the contextual factors you are assuming expressly.
2. Repeat the activity for a nine (9) year old emerging signer with significant language delays.
3. Repeat the activity for a Deaf Mexican immigrant mother with unique language skills, emerging ASL and no cognitive challenges.
4. Repeat the activity for a sixteen (16) year old with unique language skills and mild intellectual disability.
5. Prepare a video log of your sight translation and bring to class for discussion and comparison with your peers in small groups.

## Activity 2 – Dictionary Development

Concept review (in classroom or video log posting).

1. Review the Family Law vocabulary lists (Maryland and Pennsylvania) from the course materials.
2. Discuss strategies for interpreting the terms (provide necessary context where indicated) and practice sight translations in group.
3. Prepare a video dictionary of possible equivalent expressions in ASL.
4. Present each video dictionary in class and compare the similarities and differences of each group's rendition.
5. Research your state for its glossary of family law terms. Are the terms consistent with the samples from the course materials? If not, what are the major differences.
6. Discuss in class or prepare a video log as homework.

## Activity 3 – Ethical Scenarios

Concept review (in classroom or video log posting).

1. Consider and discuss the following scenario. You have been hired to accompany the GAL with your hearing team to the mainstream program where the Deaf children attend school. Upon meeting the Deaf child, you realize that your own child was suspended from school with this child because the Deaf child gave your child marijuana. While interpreting, the GAL asks the Deaf child if she has ever had any problems at school.
  - State the issue this scenario raises.
  - How would you handle the situation?
  - If you are interpreting, how do you frame the term 'problems'?
  - If the Deaf child answers negatively, do you have any obligation to the GAL to say anything? Why? How would you justify any statement ethically?
  - What implications might a decision to interpret this setting might have for the Deaf consumer?
  - What strategies can interpreters use to avoid or minimize any conflict?

## Activity 4 – Reviewing an Interpreted GAL-child Meeting

Concept review (in classroom or video log posting).

1. Review the clip of Team 2, Stephanie Clark and LeWana Clark, from the course materials of the interpreted GAL meeting from the dvd set you have from the Institute for Legal Interpreting 2014 materials.
2. Reflect upon the strategies used by the interpreters to convey the GAL's explanation of the best interest factors.
  - Compare the interpretation to the captioned content. Are the interpreted renditions equivalent?
  - Are they similar to or different from your interpretations of the best interests standards list in Activity 1 above.
  - What other linguistic strategies did you notice that were used by the Deaf interpreters to frame or contextualize the discourse?

## Assessment

Formative assessment:

- Student responses to teacher's in-class or posted questions.
- Student activity responses presented in small group or through video reflections, observations or creation of tools.
- Paper or video log assignments:

## Resource Materials

- PowerPoint course materials.
- Child Welfare Information Gateway. (2012). *Determining the Best Interests of the Child*. Available at [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.pdf#Page=2&view=Fit](https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf#Page=2&view=Fit) Washington, D.C: U.S. Department of Health and Human Services, Children's Bureau.
- Family (Domestic Relations) Law. (n.d.) Montclair State College. Legal Interpreting Program Materials 1986.