



**Adult Advocacy
Centers**

White Paper

Specialized and Disability-Focused Forensic Interviews Can Qualify as a Reasonable Accommodation Under the ADA

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“And justice for all . . .”

The preamble to the United States Constitution sets forth the notion that one of the basic functions of our government is to “establish Justice” (U.S. Const. Pmbl.). That guarantee is invoked by members of Congress as they place their hands over their hearts and pledge allegiance to the country that promises “liberty and justice for all” (U.S.C. 4, 2011). But justice is evasive when barriers restrict access to it. People with disabilities in the United States have long been denied equitable access to the legal system due not only to physical, communication, and cognitive barriers erected by the legal system, but also due to discriminatory perceptions and practices about people with disabilities throughout the justice system. The Adult Advocacy Centers (AACs) is a disability-led national organization working within the disability, victim services and criminal legal systems to improve justice equity for crime victims with disabilities.

Foundational to justice equity is the ability of a victim of crime to report that they have been victimized, and an expectation that some action will be taken to redress the harm they have experienced. Unfortunately, the disabled population experiences disproportionately high rates of violent crime, as well as disproportionately low prosecution rates.

One of the primary barriers to overcoming these inequities is a legal system that lacks the capacity to work effectively with crime victims with disabilities.

The AACs have developed protocols and started training forensic interviewers how to conduct specialized disability-focused forensic interviews. The forensic interview protocols used by the AACs address communication differences and explain how to provide accommodations,



ensure accessibility and engage trauma-informed practices to ensure that crime victims with disabilities have an equitable opportunity to report crimes and to be heard. If we as a nation wish to stand by our pledge of justice for all, at a minimum, forensic interviewing protocols designed to accommodate victims with disabilities must be universally accepted as a standard equal access accommodation under the Americans with Disabilities Act (ADA).

High Rate of Violent Crimes Perpetrated Against People with Disabilities

In 2021, the Bureau of Justice Statistics reported that the rate of violent victimization perpetrated against people with disabilities was nearly four times higher than the rate for people without disabilities. Some additional statistics (Harrell, 2021):

- One in three robbery victims was disabled;
- People with disabilities were victims of 26% of all nonfatal violent crime, while accounting for approximately 12% of the total population;
- The rate of simple assault committed against people with disabilities was more than three times more than the rate of assault committed against people without disabilities;
- An estimated 19% of sexual assaults committed against people with disabilities was reported to police, compared to 36% of sexual assaults committed against people without disabilities;
- For females with disabilities, the rate of violent victimization was 49.4 per 1,000, compared to 11.3 for females without disabilities.

Low Prosecution for Crimes Committed Against People with Disabilities

Even when crimes involving victims with disabilities are reported, less than half of such crimes (47%) are criminally prosecuted. In only 22% of these cases is the alleged perpetrator criminally charged, and only 9% result in a conviction (Roper & Ace, 2002). We believe this disproportionality stems from a denial of adequate accommodations necessary to ensure access to the legal system.

In addition, investigators commonly presume that crime victims with disabilities cannot be forensically interviewed or testify in court (Shelton, 2022; Wieck, 2009). Specialized and disability-focused forensic interviews are designed to gather information using an adapted and legally sound, open-ended questioning format. They also promote accessibility, invite accommodations and utilize trauma-informed practices. The information gathered from specialized forensic interviews can be used to help direct law enforcement investigation, decide if criminal charges can

be pursued and increase the likelihood that a case can be prosecuted. The first-person information obtained during a forensic interview can also increase the chances of a criminal conviction by enhancing the credibility of the victim and educating the jury to help them understand the victim's disability.

Barriers to Justice for Crime Victims with Disabilities

Crime victims with disabilities face multiple barriers to justice. These barriers do not only deny people with disabilities access to the criminal justice system. They also instill in the victim the belief that there is no hope of achieving justice. The result is too often future reluctance to report crimes, an increased sense of helplessness and the increased risk of re-victimization. Isolation, limited services, and a lack of accommodations all contribute to the continued violent victimization of people with disabilities (Fitzsimons, 2015). Accommodations in the criminal justice system may include a support person, a sign language interpreter, documents printed in plain language or braille, communication boards, voice amplification systems and other tools to ensure that barriers are removed (Shelton, 2022). Specialized and disability-focused forensic interviews are also an accommodation and should be offered when warranted.

Specialized and Disability-Focused Forensic Interviews

People with disabilities are often considered unreliable sources who are unable to provide accurate information during a criminal investigation. They are often believed to not have the ability or capacity to testify in court. These are unfounded myths that devalue and dehumanize crime victims with disabilities. Specialized and disability-focused forensic interviews can assist law enforcement and prosecutors by discrediting these stigmas and ensuring the victim with a disability has a voice.

Currently, most forensic interviewers have been trained to work with children and have not been trained to conduct forensic interviews for adult crime victims with disabilities. Additionally, forensic interviewers typically are not trained to provide, or even recognize the need for, accommodations or accessibility required by crime victims with disabilities. Forensic interviewers specifically trained in disability-informed protocols are able to effectively provide needed accommodations and accessibility throughout the interview process, increasing the chances of obtaining a legally defensible, reliable victim statement and resulting in a more equitable pathway to justice for crime victims with disabilities.

As a national disability-led victim service organization, the AACs are in a unique position to conduct specialized and disability-focused forensic interviews. In addition to these types of forensic interviews, the AACs have also created a certified training program to teach these

unique skills. The AACs developed ADEPT (Advocacy and Disability-Focused Education for Professionals and Teams) to train forensic interviewers to apply the accommodations, accessibility and trauma-informed practices required to be compliant with the reasonable accommodation requirements of the ADA and to improve access to equitable justice for adult crime victims with disabilities. The AACs will also continue to collaborate with Modell Consulting Group LLC on our Project FIND disability-specific forensic interview trainings that develop and refine the skills of forensic interviewers in Child Advocacy Centers (CACs) throughout the country. Together, the Project FIND and ADEPT trainings will ensure that forensic interviews can be adapted to the needs of the survivor, regardless of age.

Increasing Prosecution Rates

Many states recognize the increased risk of victimization faced by people with disabilities and the need for enhanced penalties for crimes committed against people with disabilities (Ohio Criminal Sentencing Commission, 2019). Although enhanced penalties are a step in the right direction, these cases cannot be criminally prosecuted if crime victims with disabilities are not first provided with needed accommodations. The case examples listed below demonstrate the need for specialized and disability-focused forensic interviews.

Obtaining Information and Limiting the Number of Forensic Interviews

Courts have already recognized the need for specialized interviews and specially trained interviewers for some populations.

In *State v. Arnold* (2010), the Ohio Supreme Court considered the admissibility of statements made by minor sexual assault victims to workers at a Child Advocacy Center (CAC). The court noted that a CAC is unique because of the cooperation of multidisciplinary teams, so the victim is interviewed once and therefore does not have to retell their story multiple times. The court stated that “to ensure that the child victim goes through only one interview, the interviewer must elicit as much information from the child as possible in a single interview and must gather the information needed by each team member.” The court further noted a forensic interview at a CAC “serves dual purposes: to gather forensic information to investigate and potentially prosecute a defendant for the offense and to elicit information necessary for medical diagnosis and treatment of the victim.”

Competency

Forensic interviews may also be beneficial in criminal cases where defense attorneys routinely attack the credibility of the accuser and adverse witnesses and argue that victims with disabili-

ties are not competent to testify due to their disability.

In *State v. Jackson* (2002), a felonious assault victim was diagnosed with schizophrenia and had a legal guardian. The accused argued the victim was incompetent based on his diagnosis and because he had a legal guardian, which meant that “he must have been previously determined to be incompetent by another court.” While the appellate court ultimately rejected this argument, the point remains that professionally conducted forensic interviews can help prosecutors to counter these types of arguments, prove competency and support credibility. A forensic interviewer can testify at trial regarding the forensic interview and can explain the accommodations that were provided and why this information can be considered reliable.

Hearsay Exception

Statements made during a forensic interview may be admissible in court if they fall under the hearsay exception permitting statements made for purposes of medical diagnosis or treatment.

In *State v. C.D.S.* (2021), a forensic interviewer and licensed social worker interviewed a 15-year-old about her allegations of sexual abuse. During the interview, the child described the nature of the abuse, identified the areas where she was touched and penetrated and discussed the timeline for the abuse. At trial, the court admitted a video recording of the interview. Following his conviction, the defendant argued on appeal that the statements in the video constituted impermissible hearsay evidence. The appellate court disagreed, stating that the statements helped to direct the medical examination and treatment and, as such, “the video of the forensic interview falls squarely under the medical diagnosis and treatment exception under Evid.R. 803(4).”

Forensic Interviews May be Admissible to Prove the Victim has a Disability

Forensic interviews may also help to establish that the victim has a disability, in turn assisting the prosecution to corroborate witness testimony and determining culpability.

People v. Hernandez (2017) involved S.V., a 13-year-old victim of sexual assault with an intellectual disability. Following the assault, S.V.’s parents took S.V. to a CAC in Chicago to be interviewed by someone trained to conduct forensic interviews of children. However, S.V. was unable to effectively communicate with the interviewer. Nevertheless, the trial court admitted the video recording of the interview and shared it with the jury for the limited purpose of showing S.V.’s severe intellectual disability because it was an element of the charged offense. The video lasted approximately five minutes and showed that S.V. could not respond to any of the interviewer’s questions about general matters. Instead, S.V. merely smiled and repeated some of the interviewer’s words in a childlike manner. On appeal, the defendant argued that the video inflamed the jurors’ passions against him and highlighted S.V.’s vulnerability. The

appellate court rejected that argument and upheld the trial court's decision, finding the probative value of the recording outweighed any potential prejudice. The appellate court found that the recording corroborated the witnesses' testimony about S.V.'s intellectual disability and helped jurors understand a key part of the charged offense.

In *People v. Ervin* (2018), the defendant conceded that he knowingly committed the act of sexual penetration with the victim and that the victim was unable to provide knowing consent and/or understand the nature of the sexual act. However, the defendant argued that the prosecution presented insufficient evidence as to another element of the charged offense—whether the defendant knew about the victim's inability to understand the nature of the sexual act and knew the victim was unable to give knowing consent. As part of the prosecution's case, an officer testified about a forensic interview of the victim at a CAC and how the forensic interviewer struggled to understand the victim because of the victim's speech impediment and "obvious disabilities." This and other evidence showed "that a reasonable person would know the victim exhibited a significant cognitive disability almost instantly upon meeting the victim."

Specialized and Disability-Focused Forensic Interviews Can Qualify as a Reasonable Accommodation Under the ADA

Title II of the ADA prohibits discrimination based on disability in state and local government services, including requiring that the criminal justice system avoid discriminating against people with disabilities. These entities must ensure that people with all types of disabilities are given equal access to the criminal justice system. Additionally, the nondiscrimination requirements under the ADA create an obligation to provide reasonable modifications to policies, practices, and procedures to communicate effectively with people with disabilities (U.S. Department of Justice, 2016). This includes effective communication auxiliary aids and services. Therefore, providing specialized and disability-focused forensic interviews in cases of violent crime and neglect should be discussed when determining the reasonable accommodation needs of individuals under Title II of the ADA.

Conclusion and Resources

If we, as a nation, are going to stand behind our pledge of "justice for all," crime victims with disabilities must be able to access equitable victim services under the ADA. Equity can only be achieved by providing disabled victims of crime needed accommodations and accessibility to the justice system.

If you are a person with a disability and have been the victim of a crime, you may request a specialized and disability-focused forensic interview from law enforcement. If your request for

this type of accommodation is denied, you may:

- Contact your state's [federally mandated Protection and Advocacy \(P&A\) agency](#) ([ndrn.org/about/ndrn-member-agencies](#)) for free legal advocacy.
- File a [formal ADA complaint](#) ([ada.gov/file-a-complaint](#)) through the Department of Justice Civil Rights Division.
- Find more information and technical assistance on the U.S. Department of Justice Civil Rights Division [Information and Technical Assistance on the Americans with Disabilities Act website](#) ([archive.ada.gov/criminaljustice/index.html](#)).
- Contact [the Adult Advocacy Centers](#) ([adultadvocacycenters.org](#)) for more information about forensic interviews and certified forensic interview training.

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