

SPECIAL REPORT

**INTERPRETATION &
TRANSLATION AS A RIGHT:
LANGUAGE ACCESS WITHIN
UTAH'S JAILS AND PRISON**

The ACLU of Utah recommends that jails and prisons improve language access and safeguard the rights of Limited English Proficient (LEP) individuals in their custody.



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EXECUTIVE SUMMARY

The United States is responsible for a system of mass incarceration that disparately impacts communities of color. The State of Utah contributes to this disparity, as

Black, Latinx, and Indigenous individuals are incarcerated at much higher rates than non-Latinx whites in our state.

Approximately one-third of Latinx individuals in the U.S. are Limited English Proficient (LEP) and LEP individuals of color may be among those facing the disparate impact of incarceration. LEP individuals often face more difficulty accessing necessary resources within carceral facilities than their counterparts who are fluent in English. Language barriers should not impede access to necessary information, resources, or equitable treatment.

The U.S. Constitution and federal law require that jails and prisons ensure that individuals who are in their custody and are LEP have access to necessary information and resources regardless of the languages they speak or do not speak. The inability to obtain necessary information and services can result in a lack of awareness of the facility's rules and regulations, disciplinary action, and inability to access crucial services such as medical and mental health care and impede access to general information and educational opportunities.

EXECUTIVE SUMMARY

This report provides recommendations on ways that carceral facilities can improve their language services and mitigate the impact of language barriers in their facilities. These recommendations focus on access to information and resources, access to medical care, disciplinary procedures, and grievances. Specifically, the recommendations include:

01

Identifying language needs in the facility to implement an effective LEP plan.

02

Providing guidance on accessing services and other procedures during orientation.

03

Developing a Prison Rape Elimination Act (PREA) compliant language access plan.

04

Translating important documents and signage into primary languages that are commonly spoken within the facility.

05

Implementing LEP program and service-specific complaint and grievance mechanisms and fostering stakeholder feedback regarding the LEP program and services.

06

Designating an LEP Coordinator.

EXECUTIVE SUMMARY

07

Creating an assessment tool to determine which type of interpreter would be best suited for each situation, e.g., contract interpreters, qualified bilingual staff, and/or other individuals who are incarcerated.

08

Providing accessible information pertaining to rules of conduct and disciplinary proceedings.

09

Making the general grievance procedure fully accessible to LEP individuals.

10

Ensuring that LEP individuals have equal access to programming upon which early release opportunities are conditioned, as well as educational and work opportunities.

11

Ensuring qualified interpreters with training in medical terminology are available to provide HIPPA compliant interpretation services when providing health care to LEP individuals.

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Providing Staff and Correctional Officer Training.

INTRODUCTION

Federal law and the U.S. Constitution require that government agencies make efforts to provide language access in their services. Jails and prisons are not exempt from this requirement.ⁱ Limited English Proficient (LEP) individuals who are incarcerated are even more disadvantaged than their counterparts as they are negatively impacted by language barriers, limiting their ability to communicate and understand all aspects of their lives while imprisoned.ⁱⁱ They may be alienated and isolated, and their needs may be overlooked. LEP individuals may have difficulty comprehending facility rules and disciplinary proceedings, leading to unintended misconduct and punishment. When individuals face limitations with communication, their access to rehabilitation programs and ability to fully participate in these programs will be hindered.

Those who are required to participate in specific programs to meet parole or early release requirements while they are incarcerated will be prevented from doing so if the program is not available in a language they understand or an accessible alternative is not provided to them. LEP individuals may even face challenges accessing routine health checkups, understanding the information provided to them, or communicating any health concerns they may have.

More severely, individuals who are incarcerated may experience threats to their health and safety as they may face overcrowding, sexual abuse, and violence. They may experience devastating effects on their mental health and overall well-being. These effects may be especially felt by those experiencing language barriers, leaving them with a limited ability to seek recourse, access necessary resources, and report perilous situations.

CONSTITUTIONAL AND STATUTORY RIGHTS IN CARCERAL FACILITIES

Individuals in carceral facilities do not lose all of their rights while incarcerated but instead retain numerous federal constitutional protections. Among these protections are the Eighth Amendment’s prohibition against cruel and unusual punishment, due process through their right to access administrative appeals and the parole process, and the Equal Protection Clauses of the Fourteenth Amendment.¹ Under the Fourteenth Amendment, individuals in carceral facilities are protected against unequal treatment due to their race, sex, and creed.ⁱⁱⁱ The Utah Constitution provides similar guarantees to the U.S. Constitution and can potentially be more protective of prisoners’ rights. Article I, Section 7 of the Utah Constitution protects people’s due process rights in a way analogous to the Fourteenth Amendment. At the same time, Article I, Section 9 provides similar protections to the Eighth Amendment.

“Under the Fourteenth Amendment, individuals in carceral facilities are protected against unequal treatment due to their race, sex, and creed.”

When individuals are incarcerated, it is the state’s responsibility to ensure they can access the resources and services available to them, understand the facility’s rules, and effectively communicate with staff and doctors. LEP individuals face language barriers that may impede them from accessing services and resources to which they are otherwise constitutionally entitled. LEP individuals have rights to language access under federal laws such as Title VI of the Civil Rights Act and Executive Order 13166. The United Nations has also established standard minimum rules serving as guidance for the treatment of prisoners, including rules applicable to LEP individuals, such as barring discrimination based on language and national origin and the requirement that every individual who is incarcerated is provided with written or oral information necessary to understand disciplinary requirements, information, and complaint mechanisms, and their rights and obligations.





CONTEXT ON MASS INCARCERATION

NATIONAL DEMOGRAPHICS



The United States has one of the highest incarceration rates in the world, encompassing more than 20% of the world's prison population despite not even making up 5% of the global population.² This incessant reliance on incarceration leads to a system of mass incarceration disproportionately affecting people who are Black, Latinx, and Indigenous including those with intersecting identities.^{iv}



Despite being only 13.7%, 19.5%, and 1.3% of the U.S. population respectively,³ 38.8% of individuals incarcerated in federal prisons are Black, 29.1% are Latinx, and 2.8% are Indigenous.⁴



Even more strikingly, Black people, Latinx people, and Indigenous people account for approximately 37%, 16%, and 2% of those incarcerated in state prisons and jails nationwide.⁵



In comparison to white people, Black, Latinx, and Indigenous people face incarceration at much higher rates. Nationally, Black and Latinx people in state prisons are incarcerated at rates nearly 5 times and 1.3 times that of white people, respectively.⁶ Indigenous people experience a state and federal prison incarceration rate 4 times that experienced by white people.⁷

OVERREPRESENTATION IN BUREAU OF PRISONS CUSTODY

Mass incarceration is fueled in part by the prosecution of immigration-related offenses, leading to the disproportionate incarceration rate of Latinx people in the United States. Approximately 28% of the Latinx population in the United States is LEP and may be affected by this disparity.⁸ Foreign-born individuals make up approximately 14% of the U.S. population and less than one-half of them are non-citizens.⁹ Yet, non-citizens account for a staggering 15% of those imprisoned within the Federal Bureau of Prisons.¹⁰ During Fiscal Year 2022 (FY 2022), 31.2% of federal offenders were non-U.S. citizens, and of those, 93.8% were Latinx; however, a staggering 72.6% of them were sentenced due to immigration-related offenses.¹¹ Often, non-citizens subject to immigration-related prosecutions undergo civil immigration detention coupled with removal proceedings and criminal sanctions, leading them to receive double punishment for the same violation. Prosecutions for immigration-related offenses accounted for 36% of all federal prosecutions in district court for FY 2022, making it the most prosecuted federal offense.¹²

Sections 1325 and 1326 of Chapter 8 of the U.S. Code are two of the most prosecuted immigration-related offenses. Section 1325 makes it a federal misdemeanor to enter the United States without authorization, while Section 1326 makes it a felony to reenter the United States without authorization after a prior deportation or removal order.¹³ In FY 2022, 71.4% of immigration cases involved illegal reentry, and 99.3% of illegal reentry offenders were sentenced to prison.¹⁴ Thousands of individuals each year are charged with unlawful entry under Section 1325 and unlawful entry under Section 1326, and FY 2023 was no exception. At the magistrate court level, 5,193 people were charged under Section 1325,¹⁵ and 14,350 people were charged under Section 1326 at the district court level.¹⁶ Unauthorized entry and reentry charges are often brought with the stated goal of deterring migration, yet little evidence supports this claim. Instead, these charges serve to exacerbate mass incarceration, separate families, and highlight racial disparities within the federal criminal legal system. These disparities are evident as 96% of individuals charged under Section 1326 during FY 2023 are Latinx, mainly from Mexico, Honduras, Guatemala, El Salvador, and the Dominican Republic.¹⁷ Approximately 47% of non-citizens in the U.S. are LEP and they could be among those affected by these policies.¹⁸ Although Utah does not have a federal prison or an immigration detention facility, it is home to over 250,000 immigrants, some of whom could also be affected by these policies.¹⁹ In fact, 173 individuals in Utah were charged under Section 1326 in FY 2023.²⁰



CONTEXT ON MASS INCARCERATION

STATE DEMOGRAPHICS



Utah is not exempt from mass incarceration or the disproportionate incarceration of racial and ethnic minorities. Utah's incarceration rate is much higher than that of most democracies across the world at a rate of 396 per 100,000 people.²¹ The ACLU of Utah's Blueprint for Smart Justice provides extensive information on Utah's mass incarceration landscape and found that key drivers for mass incarceration in Utah include the war on drugs and property offenses.²²

Many of those affected by this high rate of incarceration are Black, Latinx, and Indigenous people. Black people are 9.1 times, Latinx people are 1.9 times, and Indigenous people are 9.1 times more likely to be incarcerated in prison than white people in the state.²³ Despite making up 1.2%, 14.4%, and 1.0% of the state's population,²⁴ Black people make up 6.77%, Latinx people make up 21.61%, and Indigenous people make up 4.73% of the state's combined prison and jail population.²⁵

We are unaware of any carceral facility that tracks the number of LEP people in their facility. However, in Utah, more than 110,000 LEP individuals speak Spanish, Haitian, Diné bizaad, Amharic, Somali, Swahili, Yoruba, Twi, or Igbo. It's likely that many Black, Latinx, and Indigenous individuals may be affected.^{26v}



WHY LANGUAGE ACCESS IS CRUCIAL IN JAILS AND PRISONS

All individuals deserve access to necessary resources, allowing them to understand and survive the circumstances they are in. When incarcerated, LEP individuals not only have to navigate the carceral facility, but they are also often forced to navigate it in a language they do not understand, thus limiting their access to necessary resources. This problem can be felt across many different aspects of a person's life in a jail or prison.



First, they may not understand the rights afforded to them or what is communicated to them, and the carceral facility's staff may misunderstand them. LEP individuals who are incarcerated may face harsh disciplinary action as they may not be fully aware of the facility's rules or understand what infractions they committed and what is required of them. They may be unjustly placed in solitary confinement and/or may not be able to complete requirements to exit solitary confinement due to language barriers. The Due Process Clause of the Eighth Amendment may be violated if language barriers prevent an individual from a fair disciplinary hearing and they are not given translation services to prepare written statements or interpretation services during the hearing.

WHY LANGUAGE ACCESS IS CRUCIAL IN JAILS AND PRISONS

One example of such a situation is *Reyes v. Clarke*. In that case, Nicolas Reyes was held in solitary confinement for more than twelve years, partially due to the Virginia Department of Correction's failure to provide him with language services. Mr. Reyes could not complete a series of reading and writing assignments required by the prison to end his solitary confinement as he did not speak, read, or write in English.



In 2018, the ACLU of Virginia, along with Roderick and Solange MacArthur Justice Center, filed a lawsuit alleging that Mr. Reyes' Eighth and Fourteenth Amendment rights, as well as rights afforded to him under Title VI of the Civil Rights Act, had been violated as he experienced cruel and unusual punishment, was denied equal protection and due process, and faced discrimination based on national origin. In 2021, a settlement agreement was reached requiring the Virginia Department of Corrections to create and implement a department-wide language access policy.²⁷

WHY LANGUAGE ACCESS IS CRUCIAL IN JAILS AND PRISONS

Moreover, LEP individuals who are incarcerated may not have access to complaint and grievance mechanisms, which could lead to any mistreatment or constitutional violations they face going undetected. Title VI of the Civil Rights Amendment and Executive Order (EO) 13166 may be violated if LEP individuals who are incarcerated are not provided with similar access to resources such as work and education opportunities provided to other individuals who are incarcerated. LEP individuals who are incarcerated may not have the same ability to obtain early release as other incarcerated individuals if treatment programs and other programs offered by the Department of Corrections that are necessary to obtain parole are not accessible in multiple languages.

Language barriers may lead to Eighth Amendment violations if LEP individuals are prevented from accessing crucial resources such as healthcare. LEP individuals who are incarcerated may be forced to use individuals who lack proper interpretation skills to provide interpretation, such as other incarcerated individuals and/or unqualified bilingual staff, which raises concerns such as power imbalances, lack of confidentiality, and inaccurate interpretation.

In this paper, we provide recommendations for carceral facilities to minimize language barriers faced by LEP individuals and ensure they do not face discrimination within the carceral system due to these language barriers. Minimizing language barriers will also allow LEP individuals to understand better, communicate, and participate in all aspects of life while incarcerated. LEP individuals who are incarcerated are afforded constitutional protections entitling them to access the resources and services available to them without barriers. Utah carceral facilities must implement robust policies and provide access to necessary resources for LEP individuals who are incarcerated to ensure that their constitutional rights are protected.

RECOMMENDATIONS



Utah’s carceral facilities must ensure that LEP individuals in their custody can access resources and services without being impeded by their inability to fluently speak, read, write, and/or understand English. Failure to do so constitutes discrimination and implicates Eighth and Fourteenth Amendment safeguards. While this paper focuses on jails and prisons, all carceral facilities must work to fully safeguard and protect the rights of LEP individuals in their custody and to prevent those rights from being hindered because English is not their primary language. As such, we urge these facilities to adopt robust language services and implement these recommendations to the maximum extent possible.

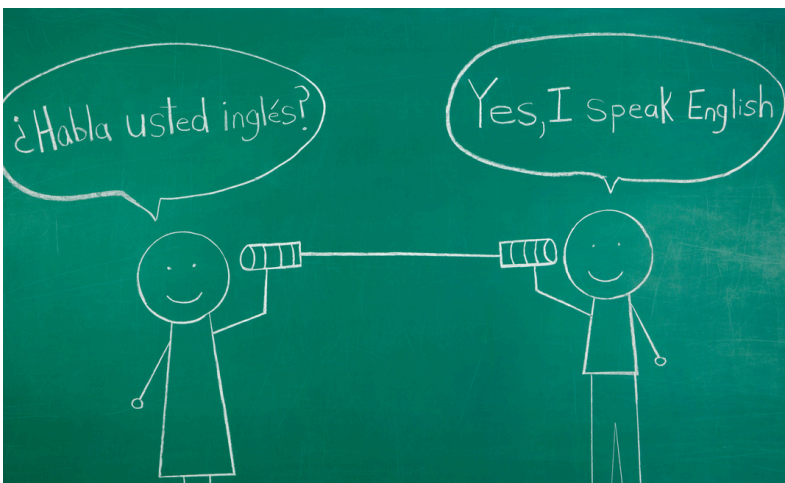


Focus of Recommendations

GENERAL POLICIES

RECOMMENDATION 1: IDENTIFY LANGUAGE NEEDS IN THE FACILITY TO IMPLEMENT AN EFFECTIVE LEP PLAN

- Identifying the language needs of LEP individuals in carceral facilities is a crucial first step to providing necessary language services and implementing an effective LEP plan.
- Language data must be maintained for all individuals in a facility's custody, and this information should be easily accessible to facility staff.
 - The data should identify all languages spoken in the facility and the number of LEP individuals in custody.
 - Language data should be regularly and periodically assessed and used to update language policies and resources available for LEP individuals who are incarcerated related to interpretation and translation services, parole, medical care, complaints, and grievances, and accessing any educational programs, work, and all other facility services available to other individuals who are incarcerated.
- Carceral facilities must develop a process to identify language needs during the intake process. An individual's primary language and their ability to speak, read, write, and understand English must be identified during the intake process and placed visibly in their records.
 - The intake process should be completed by a qualified bilingual employee certified as an interpreter and translator by a reputable interpretation service provider or in the presence of an authorized interpreter if the individual placed in the carceral facility is LEP. Reasonable efforts should be made to use a language line/interpreter throughout the intake process if a qualified bilingual employee is unavailable. If no qualified bilingual employee is available, intake questions should be provided in writing in the LEP individual's primary language to complete. LEP individuals who cannot read must receive the information verbally and in their primary language.
 - The Intake Process should involve tools such as "I speak" cards to assist someone in conveying their preferred language.
 - Individuals who are incarcerated and have received proper training to become interpreters while in the facility may be present during orientation to create a trusting environment.
 - Facilities should implement a process to screen LEP individuals after the intake process to account for anyone who needs to be properly screened or was overlooked.
 - Community feedback should be requested on the process used to identify language needs during intake to ensure that the process is effective and accurate.



GENERAL POLICIES

RECOMMENDATION 2: PROVIDE GUIDANCE ON ACCESSING SERVICES AND OTHER PROCEDURES DURING ORIENTATION:



- **LEP individuals must receive guidance on accessing LEP services during orientation in a language they understand. Preferably, authorized interpreters or qualified bilingual personnel will provide this information. The information should also be available in written and audio materials.**
- **Any information provided during orientation regarding accessing services and other necessary procedures, such as the grievance process, facility rules, and disciplinary proceedings, must be readily available in public spaces within the facility after orientation in the common primary languages spoken by LEP individuals within the facility.**
- **All materials and documents provided to LEP individuals must be provided in an individual's primary language. LEP individuals must be verbally asked in their preferred language if they can read and understand what they read. LEP individuals who self-identify as unable to read or understand should be presented with a qualified interpreter to explain the written materials and documents.**



GENERAL POLICIES

RECOMMENDATION 3: DEVELOP A PRISON RAPE ELIMINATION ACT (PREA) COMPLIANT LANGUAGE ACCESS PLAN

- A Prison Rape Elimination Act (PREA) compliant language access plan must be developed after language needs have been identified.
- PREA-compliant language access plans include but are not limited to, the identification of PREA-related circumstances and the provision of language services for all resources and services pertaining to PREA, such as vital documents, education, reporting, victim services, investigations and discipline, and medical and mental health care.^{vi}

GENERAL POLICIES

RECOMMENDATION 4: TRANSLATE IMPORTANT DOCUMENTS AND SIGNAGE INTO PRIMARY LANGUAGES THAT ARE COMMONLY SPOKEN WITHIN THE FACILITY

- **LEP individuals who are incarcerated must have access to and be able to fully understand documents that provide them with necessary information during their time in the facility.**
- **Vital documents that must be translated include:**
 - Intake and medical evaluation forms
 - Inmate orientation and rule book materials
 - Grievance procedures
 - Documents relating to classification
 - Inmate medical consent, treatment requests, and other healthcare-related forms
 - Documents relating to disciplinary or administrative proceedings
 - Inmate waiver forms
 - Inmate complaint or grievance forms
 - Inmate forms for participation in counseling, vocational work, and educational programs
 - Inmate request forms such as those relating to diet or religion
 - Visitation forms for family and public visitors
 - Information about communicating with legal counsel
 - Notices and posters containing important information and or rules.

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GENERAL POLICIES

RECOMMENDATION 5: IMPLEMENT LEP PROGRAM AND SERVICE-SPECIFIC COMPLAINT AND GRIEVANCE MECHANISMS AND FOSTER STAKEHOLDER FEEDBACK REGARDING THE LEP PROGRAM AND SERVICES

- All carceral facilities must implement effective and accessible grievance mechanisms specific to the language services provided. These mechanisms should be verbally explained to LEP individuals when they first enter the facility.
 - LEP individuals should have the opportunity to express their complaints or grievances about LEP services orally and/or through writing.
 - These grievances must be handled promptly and considered when evaluating language policies and services.
- LEP individuals in custody who receive language services should be asked to rate the quality of the services received, and the LEP Coordinator or individual providing the language service should record this information.
 - When creating or updating language policies, carceral facilities should consider consulting with community-based organizations focused on language access and the criminal legal system and/or those working with incarcerated individuals and their loved ones.
 - Carceral facilities should request feedback on the LEP services they currently provide and other services they may consider implementing from stakeholders such as facility residents and/or their loved ones, community-based organizations working with incarcerated individuals or their families, and consulates.
 - Roundtables should be held with community-based organizations, formerly incarcerated LEP individuals, and family members of incarcerated individuals to talk about personal experiences and provide feedback and suggestions.



GENERAL POLICIES

RECOMMENDATION 6: DESIGNATE AN LEP COORDINATOR

- **Carceral facilities should designate an LEP Coordinator to maintain and update data, maintain a list of available services, determine which documents require translation, update qualified interpreter trainings and interpretations, and update LEP policies and services regularly.**
- **LEP Coordinators should also be responsible for identifying vital documents and overseeing their translation.**
- **Regardless of whether there is an LEP Coordinator designated within a facility, identification of vital documents detailing necessary information for individuals who are incarcerated should be prioritized. After being identified, these documents must be translated into commonly spoken languages in the facility other than English.**
- **The LEP Coordinator or carceral facility should ensure that visitation forms and rules are translated and easily accessible in all of the preferred languages of LEP individuals and their visitors.**

GENERAL POLICIES

RECOMMENDATION 7: CREATE AN ASSESSMENT TOOL TO DETERMINE WHICH TYPE OF INTERPRETER WOULD BE BEST SUITED FOR EACH SITUATION ,E.G., CONTRACT INTERPRETERS, QUALIFIED BILINGUAL STAFF, AND/OR OTHER INDIVIDUALS WHO ARE INCARCERATED

- The assessment tool should take multiple elements into consideration such as the specific situation, stakes, power differentials, legal implications, language skills, language match, privacy needs, complexity of information, preferences of the individuals involved, and the urgency of the situation to determine which entity is best suited to provide the interpretation.
- It may be beneficial to allow other incarcerated individuals to provide interpretation during initial contact and low stakes situations such as orientation, submitting grievances, requesting books and materials from the library, etc.
- There are instances when LEP individuals who are incarcerated, especially new arrivals, may trust other individuals who are incarcerated more than facility staff to provide interpretation due to power imbalances and tensions between individuals who are incarcerated and carceral staff.
- If the only other individual available to interpret who speaks an LEP individual's language is also incarcerated, they may provide interpretation services as a language match is necessary for efficient and accurate interpretation.
- Other individuals in custody may provide interpretation/translation services for LEP individuals when there are exigent circumstances requiring immediate interpretation and/or translation, such as situations involving the immediate threat and/or danger to the safety and/or physical wellbeing of another and no one else is available to provide the interpretation.
- Individuals in custody should not be asked to translate or interpret for LEP individuals when privileged information such as medical, psychological, and disciplinary information is being presented unless it is absolutely necessary and exigent circumstances are present.
- Other individuals in custody who provide interpretation/translation services should be trained as qualified interpreters through formal interpretation and translation educational programs and should receive compensation.
- Contract interpreters and/or telephonic interpreters may be relied upon when stakes are high and qualified bilingual staff are unavailable.

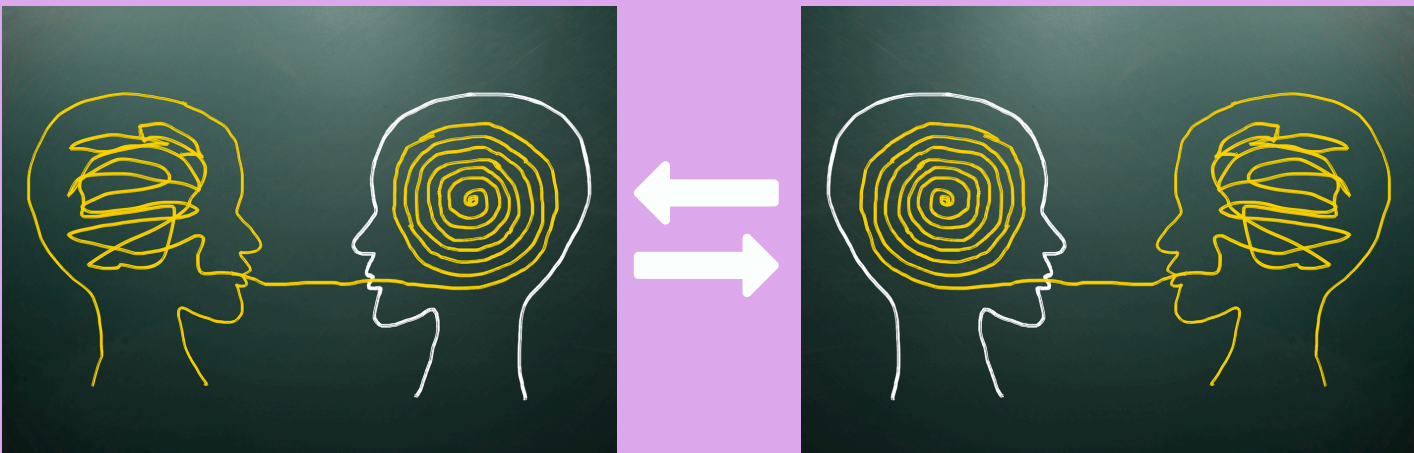


Focus of Recommendation

DISCIPLINE

RECOMMENDATION 8: PROVIDE ACCESSIBLE INFORMATION PERTAINING TO RULES OF CONDUCT AND DISCIPLINARY PROCEEDINGS

- Rules of conduct and disciplinary procedures must be verbally and thoroughly explained in an individual's preferred language during orientation.
- All information related to rules of conduct and disciplinary procedures must be translated and copies should be given to LEP individuals.
- If an LEP individual violates the rules of conduct, they must be verbally informed of each rule violation and related penalties in their preferred language 24 hours or more prior to any disciplinary hearing.
- Interpretation services must be provided during disciplinary hearings. Translation services must be available to LEP individuals who want to prepare written statements for disciplinary hearings and review any written documentation involved in the proceedings. If translation services are not available, individuals must be provided extra time.
- LEP individuals must have the opportunity to appeal unfavorable decisions and translation services for appeals must be prioritized and provided swiftly.



Focus of Recommendation

GRIEVANCES/COMPLAINTS

RECOMMENDATION 9: MAKE THE GENERAL GRIEVANCE PROCEDURE FULLY ACCESSIBLE TO LEP INDIVIDUALS

- All carceral facilities should implement grievance mechanisms that are accessible for LEP individuals. Grievance procedures must be explained orally and in an LEP individual's preferred language during orientation.
- Grievance forms must be translated to all primary languages spoken and read by LEP individuals.
- LEP individuals unable to read and/or write must receive assistance filling out grievance forms.
- All grievances presented by LEP individuals must be addressed swiftly and in their preferred language. In the alternative, a qualified bilingual interpreter must be made available to translate the grievance to the LEP individual.



Focus of Recommendation

EDUCATIONAL/WORK OPPORTUNITIES

RECOMMENDATION 10: LEP INDIVIDUALS MUST HAVE EQUAL ACCESS TO PROGRAMMING UPON WHICH PAROLE OR EARLY RELEASE IS CONDITIONED, AS WELL AS LEGAL ACCESS AND EDUCATIONAL AND WORK OPPORTUNITIES

- Treatment programs and other programs offered by the Utah Department of Corrections necessary to obtain parole or early release should be readily accessible to LEP individuals. Access to these programs must not be delayed due to language difficulties. If treatment programs and other programs necessary for parole are not available in an LEP individual's preferred language, interpretation and translation services must be provided to make these programs or alternative programs accessible in the preferred language.
- Educational and work opportunities not required for parole must be equally accessible to LEP individuals or equivalent alternatives must be offered.
- ESL courses must have enough seats to meet the needs of LEP individuals and enrollment in such courses should not be delayed due to limited capacity.
- Adult basic education and GED exams must be made available in as many languages possible. The GED is currently available in Spanish and French, and both should be offered to individuals wishing to take it.
- LEP individuals must have access to materials from the law library in their primary language and/or any other method used by the jail or prison to fulfill their duty of providing legal access.



Focus of Recommendation

HEALTHCARE (MENTAL AND PHYSICAL)

RECOMMENDATION 11: ENSURE QUALIFIED INTERPRETERS WITH TRAINING IN MEDICAL TERMINOLOGY ARE AVAILABLE TO PROVIDE HIPPA COMPLIANT INTERPRETATION SERVICES WHEN PROVIDING HEALTH CARE TO LEP INDIVIDUALS

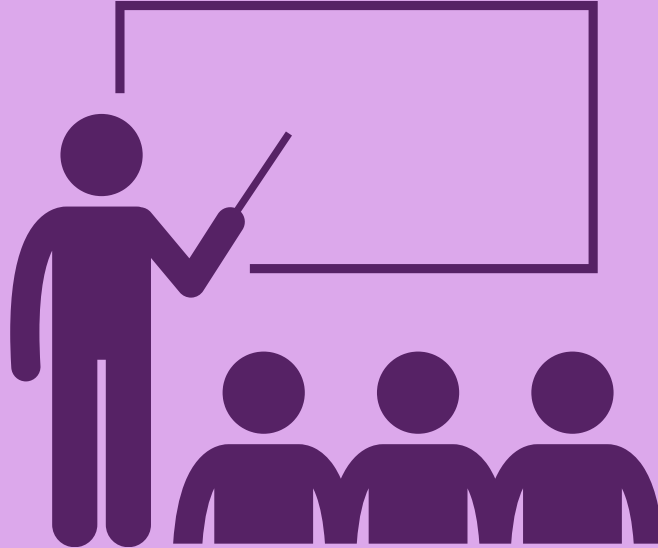
- Ideally, bilingual medical staff with training in medical terminology will be available during medical visits. In the case that no bilingual medical staff are available, professionally trained medical interpreters should be used whenever healthcare is provided to an LEP individual.
- Medical forms must be translated for LEP individuals and if they cannot read and/or write or require help filling out the form for any reason, bilingual medical staff or medical interpreters should be of assistance. Notices, procedures, diagnoses, conclusions, and instructions should be communicated to the LEP individual accurately and in their preferred language.²⁹
- Under HIPPA, other individuals in custody cannot provide interpretation or translations services for LEP individuals for any healthcare information because individual health care information must be kept confidential.



Focus of Recommendation

TRAININGS

RECOMMENDATION 12: PROVIDE STAFF AND CORRECTIONAL OFFICER TRAINING



- **Staff and correctional officers should receive regular and periodic training on what language services are available and how to access them.**
- **Bilingual staff members, correctional officers, and all others providing interpretation and translation services must be qualified to do so. They should receive professional training and undergo certification by the carceral facility as well as receive additional compensation for provision of such services.**
- **Carceral facilities should partner with higher education institutions and formal interpretation and translation educational programs to ensure that adequate trainings are provided.**
- **Carceral facilities may set their own standards to certify an individual as a qualified interpreter, but these standards should ensure that the individual is fluent in all the languages they will provide services in and is able to provide competent services.**
- **Trainings should be available to bilingual personnel who would like to become qualified interpreters and refresher trainings should be provided yearly for staff who have been identified as qualified interpreters.**
- **Staff should receive training on cultural competency and best ways to interact with LEP individuals.**

CONCLUSION

Everyone deserves equitable treatment, dignity, and access to necessary resources, including individuals in the custody of carceral facilities. Federally funded programs and activities, including jails and prisons, must provide language access under the U.S. Constitution and federal law. LEP individuals are unable to understand and participate in daily life activities within jails and prisons when language barriers are present. Language barriers also limit an LEP person's ability to access crucial resources such as medical care, grievance mechanisms, educational opportunities, and information necessary to understand disciplinary procedures. All carceral facilities must make efforts to improve language access within their facilities.



Recommendations included in this report to achieve this goal include:

- Identifying language needs within the facility,
- Providing guidance on accessing services and other procedures during orientation,
- Translating crucial documents,
- Developing a PREA-compliant language access plan,
- Implementing LEP program and services specific complaint and grievance systems,
- Designating an LEP Coordinator,
- Creating an assessment tool to determine which type of interpreter would be best suited for each situation,
- Providing accessible information pertaining to rules and conduct,
- Making the grievance procedure accessible,
- Ensuring LEP individuals have equal access to educational and work opportunities,
- Ensuring language access with medical care, and
- Providing staff and correctional training.

Following these recommendations is an important first step in improving language access within jails and prisons and subsequently improving the lives and safeguarding the rights of LEP individuals who are incarcerated.

ENDNOTES

- i For the purpose of this paper, we will not include any information related to juvenile detention facilities or any detention facility other than jails and prisons.
- ii This paper will not provide information related to persons with disabilities or Americans with Disabilities Act (ADA) requirements.
- iii Although the Sixth Amendment of the U.S. Constitution provides a crucial right to counsel, it is out of the scope of this paper due to the court's role in appointing counsel.
- iv The datasets used in this report use the terms “Native American” and “Alaskan Native” but at the ACLU of Utah we prefer the term “Indigenous”. Many federal laws, policies, and treaties still utilize the term “Indian” although the term can sometimes be used and applied derogatorily. It is crucial to specify that people can have intersecting identities not accounted for in the data. Many Latinx individuals hold Indigenous ancestry and it is crucial to understand how borders have been prescribed to understand this identity. The datasets also utilizes the terms “Hispanic or Latino” but we prefer the term “Latinx”.
- v The dataset used in this report specifies Amharic, Somali, and Swahili languages, however, other Afro-Asiatic languages and Central, Eastern, and Southern African languages may be included in the calculations. Yoruba, Twi, and Igbo are also explicitly stated in the data but other languages of Western Africa may be included in the numbers. The calculations may also include Indigenous languages other than Diné bizaad but those are not specified in the data.
- vi More information on developing a PREA-Compliant language access plan is available in the Vera Institute of Justice's report entitled, [“Developing a PREA-Compliant Language Access Plan for Incarcerated People Who Are Limited English Proficient”](#).

REFERENCES

- [1]** Legal Information Institute. (2017, June 20). Prisoners' rights. LII / Legal Information Institute. https://www.law.cornell.edu/wex/prisoners%27_rights
- [2]** ACLU. (2017). Mass Incarceration. American Civil Liberties Union; American Civil Liberties Union. <https://www.aclu.org/issues/smart-justice/mass-incarceration>
- [3]** United States Census Bureau. (2023, July). Quick Facts United States. Census.gov. <https://www.census.gov/quickfacts/fact/table/US>
- [4]** BOP Statistics. (June, 2024). Inmate race. Inmate Ethnicity. https://www.bop.gov/about/statistics/statistics_inmate_race.jsp
- [5]** Initiative, P. P. (2023, September 27). Updated data and charts: Incarceration stats by race, ethnicity, and gender for all 50 states and D.C. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2023/09/27/updated_race_data/
- [6]** Nellis, A. (2021). Racial and Ethnic Disparity in State Prisons. In The Sentencing Project. <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>
- [7]** Initiative, P. P. (n.d.-b). Native incarceration in the U.S. Prison Policy Initiative. <https://www.prisonpolicy.org/profiles/native.html#:~:text=In%20the%20United%20States%2C%20Native,of%20763%20per%20100%2C000%20people.>
- [8]** Pew Research Center. (2024, June 14). English proficiency of Hispanic population in the U.S., 2021 | Pew Research Center. <https://www.pewresearch.org/chart/us-hispanics-english-proficiency/>
- [9]** Azari, S. S., Jenkins, V., Hahn, J., & Medina, L. (2024). The Foreign-Born Population in the United States: 2022. In American Community Survey Briefs (ACsBR-019). <https://www2.census.gov/library/publications/2024/demo/acsbr-019.pdf>
- [10]** BOP Statistics: Inmate citizenship. (2024, June). https://www.bop.gov/about/statistics/statistics_inmate_citizenship.jsp

REFERENCES

[11] United States Sentencing Commission. (2022). Non-U.S. Citizen Federal Offenders Fiscal Year 2022. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Non-Citizen_FY22.pdf.

[12] UNITED STATES ATTORNEYS' ANNUAL STATISTICAL REPORT FISCAL YEAR 2022. (n.d.). Retrieved May 11, 2023, from <https://www.justice.gov/media/1279221/dl?inline>

[13] 8 U.S. Code § 1325 - Improper entry by alien. (2019). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/8/1325>

[14] United States Sentencing Commission. (2022). Illegal reentry offenses [Report]. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY22.pdf

[15] U.S. Department of Justice. (2023). 8 USC 1325 Defendants Changed* Magistrate Court. <https://www.justice.gov/usao/file/1318791/dl?inline>

[16] U.S. Department of Justice. (2023). 8 USC 1326 Defendants Changed* District Court. <https://www.justice.gov/media/1318806/dl?inline%20calculations>

[17] U.S. Department of Justice. (2023). 8 USC 1326 Defendants Changed* District Court. <https://www.justice.gov/media/1318806/dl?inline%20calculations>

[18] Rao, A., Pillai, D., Artiga, S., Hamel, L., Schumacher, S., Kearney, A., & Presiado, M. (2024, March 14). Five Key Facts About Immigrants with Limited English Proficiency | KFF. KFF. <https://www.kff.org/racial-equity-and-health-policy/issue-brief/five-key-facts-about-immigrants-with-limited-english-proficiency>

[19] American Immigration Council. (2022). New Americans in Utah. https://www.americanimmigrationcouncil.org/sites/default/files/research/new_americans_in_utah.pdf

[20] U.S. Department of Justice. (2023). 8 USC 1326 Defendants Changed* District Court. <https://www.justice.gov/media/1318806/dl?inline%20calculations>

REFERENCES

[21] Initiative, P. P. (n.d.). Utah profile. [Www.prisonpolicy.org](http://www.prisonpolicy.org).

<https://www.prisonpolicy.org/profiles/UT.html>

[22] AMERICAN CIVIL LIBERTIES UNION. (2018). Blueprint for smart Justice: Utah.

<https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-UT.pdf>

[23] Initiative, P. P. (n.d.). Utah profile. [Www.prisonpolicy.org](http://www.prisonpolicy.org).

<https://www.prisonpolicy.org/profiles/UT.html>

[24] Bateman, M., Beagley, M., Brandley, A., Christensen, N., Dean, P., Eskic, D., Gochnour, N.,

Hogue, M., Lloyd, N., Pace, L., Prior, H., Robinson, J., Summers, L., & Kem C. Gardner Policy

Institute. (2024). Data Book: Utah Demographic Characteristics. In Data Book [Report].

<https://gardner.utah.edu>

[25] Initiative, P. P. (2023, September 27). Updated data and charts: Incarceration stats by race, ethnicity, and gender for all 50 states and D.C. Prison Policy Initiative.

https://www.prisonpolicy.org/blog/2023/09/27/updated_race_data/

[26] U.S. Census Bureau. (n.d.-b). Explore Census data.

<https://data.census.gov/table/ACSDT5Y2022.B16001?>

[q=B16001&t=Language%20Spoken%20at%20Home&g=040XX00US49&tp=false](https://data.census.gov/table/ACSDT5Y2022.B16001?q=B16001&t=Language%20Spoken%20at%20Home&g=040XX00US49&tp=false)

[27] Reyes v. Clarke, et al. | ACLU of Virginia. (2018, September 6). [Www.acluva.org](http://www.acluva.org).

<https://www.acluva.org/en/cases/reyes-v-clarke-et-al>

[28] SAMPLE FOR DISCUSSION PURPOSES PLANNING TOOL: CONSIDERATIONS FOR CREATION OF a LANGUAGE ASSISTANCE POLICY AND IMPLEMENTATION PLAN FOR ADDRESSING LIMITED ENGLISH PROFICIENCY IN a DEPARTMENT OF CORRECTIONS. (2023, April 11).

https://www.justice.gov/crt/fcs/LEP_Corrections_Planning_Tool

[29] SAMPLE FOR DISCUSSION PURPOSES PLANNING TOOL: CONSIDERATIONS FOR CREATION OF a LANGUAGE ASSISTANCE POLICY AND IMPLEMENTATION PLAN FOR ADDRESSING LIMITED ENGLISH PROFICIENCY IN a DEPARTMENT OF CORRECTIONS. (2023, April 11).

https://www.justice.gov/crt/fcs/LEP_Corrections_Planning_Tool

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This report highlights state-specific information about the racial disparities in Utah jails and prisons.

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