



HHS Public Access

Author manuscript

Autism Res. Author manuscript; available in PMC 2024 December 01.

Published in final edited form as:

Autism Res. 2023 December ; 16(12): 2240–2246. doi:10.1002/aur.3039.

Language is a critical mediator of autistic experiences within the criminal justice system

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Abstract

Autism spectrum disorder is characterized by social communication challenges and restricted and repetitive behaviors and interests, but also by highly heterogeneous language skills. The recent International Society of Autism Research (INSAR) policy statement, *Autism and the Criminal Justice System: Policy opportunities and challenges* (INSAR, 2022), aims to prevent, reduce, and improve interactions between autistic individuals and the criminal justice system. This policy statement provides a foundation for considering how to include language in these important aims. In this commentary, we outline the centrality of language skills to these interactions and provide specific recommendations that can inform future research and provide guidance for autistic individuals, community partners, and individuals working within the criminal justice system. Considering language as a part of justice system policy for autistic individuals will result in greater equity and inclusion, particularly for autistic individuals with co-occurring language deficits and those who are linguistically diverse. Moreover, it will allow autistic individuals to combat other barriers to effectively navigating interactions with the criminal justice system, such as those related to the core features of autism. We advocate for a greater role for service providers who can assess challenges in language skills, and identify the specific accommodations each autistic individual will need to prevent, reduce, and improve interactions with the criminal justice system.

Lay Summary

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Conflict of Interest Statement: The authors have no conflicts of interest to disclose.

Autistic individuals have varied language abilities which may represent assets or barriers to equitable interactions with the criminal justice system. The criminal justice system involves high language demands. We advocate considering language skills at all levels of justice system policy for autistic individuals, and we provide language-focused strategies that may be implemented alongside the INSAR policy statement.

Keywords

Autism spectrum disorder; Criminal justice system; Policy; Language; Equity

The primary characteristics of autism spectrum disorder (ASD) involve difficulty with social communication and restricted and repetitive behaviors and interests (American Psychological Association, 2013). Importantly, autism is also characterized by highly heterogeneous language abilities, including variability in structural language (e.g., morphology, complex syntax, past-tense verb marking). A subgroup of individuals with ASD presents with structural language impairments similar to those observed in developmental language disorder (Kjelgaard & Tager-Flusberg, 2001; Larson et al., 2022; Wittke et al., 2017). Many autistic individuals also experience subtle language differences that may impair communication (e.g., using more repetitions and self-corrections than non-autistic peers; Suh et al., 2014) and these challenges may be more likely to emerge under stress (Alice et al., 2008). The criminal justice system has high language demands (e.g., Kablan & Quinlan, 2004; Redlich & Summers, 2011; The Communication Trust, 2014), and, unsurprisingly, individuals with language deficits are over-represented within the justice system likely due in part to language-based barriers (Anderson et al., 2016; Lavigne & Rybroek, 2011; Lieser et al., 2019; Snow & Powell, 2004). Autistic individuals interact with the criminal justice system at high rates and are faced with barriers to effectively navigating these interactions (Blackmore et al., 2022; Rava et al., 2017; Talbot & McConnell, 2017). Individuals with ASD who also have structural language deficits will experience disproportionately greater barriers. *Assuming* heterogeneity in language skills is critical to addressing the supports that each autistic individual may need to improve individual outcomes and to inform the criminal justice system about how to most effectively interact with autistic individuals. Moreover, Title II of the Americans with Disabilities Act (ADA) requires nondiscrimination against autistic individuals in the criminal justice system, including providing reasonable modifications and taking appropriate steps to communicate effectively (e.g., in courts, prisons, juvenile justice centers, etc.).

The recent International Society of Autism Research (INSAR, 2022) policy statement, *Autism and the Criminal Justice System: Policy opportunities and challenges*, targets the critical goals of “preventing, reducing, and improving interactions between autistic individuals and the criminal justice system” (p. 1; INSAR, 2022). This policy document proposes a number of changes to achieve this end, and provides a foundation for considering how to include language in these critical aims. The current commentary reviews the *central relevance* of language skills to prevention and interactions between autistic individuals and the criminal justice system with the goal of advocating that challenges associated with heterogeneity in language skills should be *assumed* at all levels. We use the policy document

as our framework and we offer specific strategies that can be considered alongside the INSAR policy statement with the goals of improving equity and justice for individuals across the autism spectrum and providing a practical resource that professionals working within the criminal justice system can use immediately.

Communication and Environmental Supports

The highly complex language used to communicate legal issues, rather than legal concepts, is inaccessible (Martinex et al., 2022). This poor writing has devastating real-world consequences that lead to systematic injustice for autistic individuals and others (e.g., individuals with developmental language disorder). The policy statement described features of autism related to social communication that could impact interactions with the criminal justice system, as well as co-occurring areas of difficulty, such as mental health diagnoses, sensory needs, and executive functioning. The authors recommended assessing these areas of difficulty to develop and provide communication and environmental supports, such as modified interviewing techniques. We propose specific opportunities to provide communication and environmental supports related to language during interviews, hearings, and other legal procedures which can be implemented *immediately* by individuals working in the criminal justice system.

First, the language of legalese must be reconsidered and comprehension must be checked. When initially taken into custody, individuals with ASD may hear the following language about Miranda rights in the United States: *If you would like a lawyer and you cannot afford to hire one, the court can appoint one for you.* This sentence involves complex syntax and is typically embedded within a longer expository Miranda statement. Autistic individuals with structural language deficits have greater difficulty understanding complex syntax than peers who do not have structural language deficits. Comprehending a lengthy, multi-sentence statement will similarly be more difficult than, for instance, if each warning or statement were presented individually (note that this is an adaptation which may be implemented immediately; e.g., Mason et al., 2008; see Hopkins et al., 2016 and O'Mahony, 2012 for evidence from non-autistic individuals). In the event that there are insufficient comprehension supports or checks and an autistic individual waives their Miranda rights, language challenges will likely undermine the validity of the waiver. This issue would be expected and readily identified if the assumption is that autistic individuals experience language-based comprehension challenges.

Second, the linguistic expectations within interviews and other conversations must be adjusted. Victims, witnesses, and suspects are typically asked specific questions that involve even more complex syntax than Miranda statements, such as *When you were at the park, who was with you?* This sentence includes an unspecified pronoun (who), a dependent clause which requires comprehension of the initial clause, and a presupposition that the person was indeed at the park. It should be assumed that autistic individuals will struggle to respond to these types of questions in general and especially when these questions require a narrative account of events. Narrative language skills tend to be compromised in autistic individuals, with higher rates of ambiguous language and disfluencies, such as repetitions, self-corrections, and less coherence of connected events, relative to neurotypical peers

(Canfield et al., 2016; Diehl et al., 2006; Suh et al., 2014). Even ostensibly subtle narrative patterns, like repetitions, may affect interviewer perceptions of truthfulness or accuracy. These difficulties may be particularly evident in stressful contexts, like when there are time constraints to respond to questions, due in part to increased rates of anxiety in individuals with ASD (Gotham et al., 2015). Thus, if criminal justice professionals assume that these questions and responses will be challenging for autistic individuals, the expectation, and therefore the pressures of the interaction, may lessen. For instance, we all change our language intuitively and with ease for individuals of varied levels of linguistic ability, such as young children versus adolescents, or colleagues who are experts in an area versus novices. This simplification might involve less complex syntax, less abstract or esoteric vocabulary, a slowed rate or quantity of language, and longer pauses to allow for responses. Each of these techniques can be used intuitively as a starting point to reduce linguistic barriers to interactions for autistic individuals *if it is assumed that autistic individuals experience language comprehension and expression difficulties*.

Third, autistic individuals may encounter challenges in forming effective relationships with legal counsel, as language difficulties interfere with how these relationships are developed (LaVigne & Van Rybroek, 2011, 2013). Poorer relationships with legal counsel impact how autistic individuals are treated and supported at all stages of the legal process. The effectiveness of legal counsel directly reflects the autistic individual's ability to assist counsel, primarily through language-based communication. Autistic individuals must also comprehend the *role* of counsel, typically communicated via verbal explanation, and apply this information to their relationship, such as by carefully explaining facts and emotional states (LaVigne & Van Rybroek, 2013). Language abilities can facilitate or impede this critical process, over and above barriers related to core autism features.

Fourth, judges and juries consider the expression of remorse as pivotal to rehabilitation potential. From the perspective of judges and juries, remorse is considered highly relevant in the sentencing (Haskins & Silva, 2006), and a sufficient expression of remorse is likely to be rewarded whereas insufficient expression may lead to harsher consequences (Bandes, 2016; Proeve, 2023). Poor language skills compound this issue, given the double challenge of communicating remorse as a *social skill* and communicating remorse *using language*. If judges and legal counsel assume that autistic individuals not only experience social interaction difficulties, but also language-based difficulties, the opportunity to adapt language used during interactions and linguistic expectations held by judges and counsel may reduce barriers to expressing remorse and forming effective relationships.

Taken together, it is clear assuming heterogeneity in an autistic individual's language is critical to reducing barriers within the criminal justice system. Important first steps include modifying interviews, interrogations, or court hearings to meet language comprehension and production needs. Many of these accommodations can be accomplished even if specialized service providers or caregivers are unavailable, by relying on the common shared experience of adapting our language to fit the needs of different communication partners, such as children versus adults. Additionally, the Canadian justice toolkit referenced in the INSAR policy statement (p. 3) includes language expression and comprehension in their checklist used to identify and address the needs of individuals with developmental disabilities,

underscoring the relevance of language skills and how to better individualize supports and interactions. This more individualized approach aligns with the neurodiversity perspective as it accounts for the unique needs and experiences of each individual and represents a long-term goal to which our criminal justice should aspire. In the absence of assuming language-based heterogeneity, supports and accommodations may also mistakenly address secondary skills, like executive functioning or externalizing behavior, when the area of need is language-based supports (e.g., Larson et al., 2020; Wittke & Spaulding, 2018).

Disclosing One's Autism Diagnosis and Needs

Additional supports identified in the policy statement focus on interactions with law enforcement, such as developing tools for autistic individuals to share information about their diagnosis and other needs to first responders, and opportunities to build mutual trust between law enforcement and autistic individuals. The emphasis on sharing their diagnosis is well-founded given the low rates of diagnosis disclosure by autistic people (Crane et al., 2016), and these goals may prevent escalation of interactions with the criminal justice system. We also identify how language may be considered alongside the goal of self-disclosure. First, information about diagnosis and needs will be shared *using language*, and some of these needs will reflect heterogeneity in language skills. For instance, if an autistic individual has co-occurring language deficits, language-based challenges will need to be defined and may represent barriers to self-disclosure. In this case, a service provider (e.g., speech-language pathologist) or family member/caregiver may be needed to support the information sharing process with first responders, who are not experts in language nor in understanding the unique needs of individuals with ASD. It may also be beneficial for there to be a standardized statement or information provided to judges when an autistic individual *chooses to disclose* their diagnosis during court proceedings. This commentary may be a first step in having such a resource available and circumventing issues with relying on a service provider or caregiver to communicate such information, particularly for autistic individuals who face language- and social communication-barriers in expressing their unique experiences and needs.

Similarly, building trust between law enforcement and autistic individuals will require an understanding of language abilities on both sides. If significant barriers in language skills are present, a service provider or family member/caregiver may support linguistic comprehension for both parties, over and above ensuring effective social communication (e.g., related to eye contact or gestures). Without considering individual differences in language abilities, goals related to interactions with law enforcement may only be successful for autistic individuals with relatively strong language skills. Thus, a resource that autistic individuals may readily access to disclose their autism diagnosis and share specific information with law enforcement, such as the individual's difficulty making eye contact or understanding questions, may prevent escalation in the absence of providers or caregivers.

Public Health Messaging and Equity

The INSAR policy statement identifies public health messaging as a key tool to promote equity in community participation and to increase awareness of non-emergency supports for

with legal counsel. *Language is at the center of this competency*. Court proceedings are inherently linguistic in nature, and effective counsel assistance is a function of how well the autistic individual communicates using social skills *and language*. In addition, when an autistic individual waives a right, whether that be Miranda or Miranda equivalent rights, the right to a trial, the right to testify, the right to contest a transfer to adult court, or another right afforded to them, the legality of these waivers should be of concern. Language competency will also impact the reliability and validity of confessions as well as victim statements, impacting their legal admissibility. Because many court and probation orders are long, dense, and language-heavy, these orders are often less accessible to autistic individuals, thereby increasing the likelihood that autistic individuals will fail to comply (Lount et al., 2018; Martinex et al., 2022). Finally, the unique characteristics of Autistic individuals and their varied language deficits place them at risk of being perceived as uncooperative and exhibiting a lack of remorse in high-stakes legal situations (Debbault & Rothman, 2001). Thus, we advocate assuming that autistic individuals will experience language-based barriers in effective prevention and interactions with the criminal justice system.

Recommendations

To mitigate barriers and facilitate successful communication between autistic individuals and those working in the justice system, it is imperative that the language skills of autistic individuals be considered. Although it is not currently feasible to address the heterogeneous language challenges experienced by this population, there are ways to increase the accessibility of language used throughout the justice system.

First and foremost, legal stakeholders must recognize the frequent and clinically meaningful language deficits observed in ASD. This awareness will help them to recognize that the traditional way of communicating across the justice system is not appropriate for successful communicative interactions with this population. To access their legal rights, those with ASD must be able to understand the instructions, commands, and questions asked of them, respond thoroughly and accurately to the language directed at them, recollect what happened in the past, and communicate this recollection (typically verbally) with appropriate detail and clarity. They must also be competent in communicating each time a *lack of comprehension* occurs. Thus, accessing their legal rights is likely not feasible for many with ASD.

There are, however, reasonable accommodations that can be implemented immediately to minimize communication failures between individuals with autism and those in the justice system. See Table 1 for suggestions of reasonable adjustments to minimize miscommunication between individuals with ASD and legal stakeholders. Importantly, we provide suggested guidelines for how those working in the justice system can adjust their language and interpret the language of autistic individuals. We also recognize that an individualized approach needs to be taken when members of the justice system encounter someone from this vulnerable population. Thus, we encourage stakeholders to be aware that a one-size-fits-all approach is inappropriate and to use this table as a framework by which they may be able to individualize their interactions with autistic individuals.

Conclusions

Notably, our recommendations and recommendations in the INSAR policy statement would benefit from involvement of service providers, such as social workers behavioral health providers, and court advocates, to individualize modifications and supports in the community and courtroom, and during law enforcement interactions. Thus, a long-term goal is to include practitioners in psychology and speech-language pathology during interactions with the criminal justice system to better support autistic individuals in receiving equitable treatment. Services and modifications that reflect the *specific needs of autistic individuals* will be more accurately determined with the involvement of service providers with specific expertise in language, given the linguistic heterogeneity and presence of co-occurring structural language impairment in ASD. Currently, there is a lamentable disconnect between the high language demands of the justice system and the language abilities of autistic individuals, as well as between the goal of equitable justice system practices and the diversity of linguistic and dialectal experiences of autistic individuals. The implementation of policy within the context of a system that has historically ignored language must include a focus on understanding language skills. These language skills are a prerequisite to accessing support services and guiding modifications for autistic individuals as outlined in this commentary and as mandated by Title II of the Americans with Disabilities Act. Taken together, we recommend considering language at all levels of justice system policy for autistic individuals and assuming that they will need language-based supports and accommodations in order to adhere to nondiscrimination requirements. Importantly, these accommodations are applicable to other populations that experience language-based difficulties and face inequity in the criminal justice system, such as developmental language disorder and specific learning disability. We recommend a greater role for service providers who can address these needs and characterize the linguistic supports each autistic individual needs to prevent, reduce, and improve interactions with the criminal justice system as part of long-term policy goals.

Acknowledgements:

The authors would like to gratefully acknowledge funding from the National Institutes of Health R01MH112687-01A1.

Data Availability Statement

Data sharing is not applicable to this article as no new data were created or analyzed in this study.

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Table 1.

Reasonable adjustments to minimize miscommunication and misinterpretation or language challenges of individuals with ASD.

General Approach	Specific Strategies	Examples of What NOT TO DO	Examples of What TO DO
Be Mindful of Words	<i>Minimize use of legal jargon</i>	Replace “unauthorized” and “discoverable”	Say “not allowed” and “able to be found”
	<i>Use simple plain language</i>	Replace “affirm” and “conduct”	Say “agree” and “what you did/behavior”
	<i>Avoid multiple meaning words</i>	Replace “You can bank on that.” or “You can count on that.”	Say “That will happen”
	<i>Eliminate unnecessary words</i>	Replace “Why don’t you tell me what happened?”	Say “What happened?”
	<i>Minimize use of pronouns</i>	Replace, “Did he hit it?”	Say, “Did Jason hit the car?”
Be Simple, Direct, and Concrete	<i>Use simple, one-step instructions</i>	Replace “Put your hands up and turn around.”	Say “Put your hands up.” (insert pause/ wait for hands to go up). “Turn around.”
	<i>Avoid tag questions</i>	Replace, “Maddy didn’t take the money, did she?”	Say, “Did Maddy take the money?”
	<i>Be clear about what, when and where</i>	Replace, “When and where did the incident happen?”	Say, “What day did the robbery happen?” (wait for a response) Then ask, “Where did the robbery happen?”
Avoid Language that Requires Inferencing	<i>Avoid idioms that will be taken literally</i>	Replace, “Are you pulling my leg?”	“Is that true?”
	<i>Avoid use of humor, including sarcasm</i>	Replace, “I bet you enjoyed losing your job.”	“Tell me about your job.” “What happened with your job?”
	<i>Avoid questions which involve interpreting the intentions, feelings, thoughts, or perceptions of others</i>	Replace, “Why didn’t Leo leave when he knocked on the door and nobody answered.”	“What happened after Leo knocked on the door?”
Take Steps to Ensure Comprehension (assume comprehension challenges)	<i>When feasible, present information in oral and written format</i>	Replace oral-only Miranda or Miranda equivalent rights	Present information in spoken <i>and</i> written form
	<i>Present information at a slower pace</i>	Replace presenting all rights at one time, at an average or fast rate	Pause for ~3 seconds between reading each Miranda right, slow down when speaking
	<i>Ask comprehension questions</i>	Replace no comprehension checks or comprehension checks only after a long series of information	Ask, “What questions do you have?”; and/or say, “Tell me what I said in your own words” after each item, such as each Miranda right