

Introduction to Intellectual Disabilities



What Is an Intellectual Disability?

Intellectual disability is a disability that occurs before age 18. People with this disability experience significant limitations in two main areas: 1) intellectual functioning and 2) adaptive behavior. These limitations are expressed in the person's conceptual, social and practical everyday living skills. A number of people with intellectual disability are mildly affected, making the disability difficult to recognize without visual cues. Intellectual disability is diagnosed through the use of standardized tests of intelligence and adaptive behavior. Individuals with intellectual disabilities who are provided appropriate personalized supports over a sustained period generally have improved life outcomes (AAIDD, 2011). In fact, many adults with intellectual disabilities can live independent, productive lives in the community with support from family, friends and agencies like The Arc.

How Many People Have Intellectual Disabilities?

An estimated 4.6 million Americans have an intellectual or developmental disability (Larson, 2000). Prevalence studies may not identify all people with intellectual disabilities. Many school age children receive a diagnosis of learning disability, developmental delay, behavior disorder, or autism instead of intellectual disability.

What Is Intelligence?

Intelligence refers to a general mental capability. It involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly, and learn from experience. Intelligence is represented by Intelligent Quotient (IQ) scores obtained from standardized tests given by trained professionals. Intellectual disability is generally thought to be present if an individual has an IQ test score of approximately 70 or below.

What Is Adaptive Behavior?

Adaptive behavior is the collection of conceptual, social and practical skills that have been learned by people in order to function in their everyday lives. Significant limitations in adaptive behavior impact a person's daily life and affect his or her ability to respond to a particular situation or to the environment. Standardized testing aims to measure the following skills:

- **Conceptual skills:** receptive and expressive language, reading and writing, money concepts, self-direction.
 - **Social skills:** interpersonal, responsibility, self-esteem, follows rules, obeys laws, is not gullible, avoids victimization.
 - **Practical skills:** personal activities of daily living such as eating, dressing, mobility and toileting; instrumental activities of daily living such as preparing meals taking medication, using the telephone, managing money, using transportation and doing housekeeping activities; occupational skills; maintaining a safe environment.
- A significant deficit in one area impacts individual functioning enough to constitute a general deficit in adaptive behavior (AAIDD, 2011).

How Does Having

a Disability Affect Someone's Life?

The effects of intellectual disabilities vary considerably among people who have them, just as the range of abilities varies considerably among all people. Children may take longer to learn to speak, walk and take care of their personal needs, such as dressing or eating. It may take students with intellectual disabilities longer to learn in school. As adults, some will be able to lead independent lives in the community without paid supports, while others will need significant support throughout their lives. In fact, a small percentage of those with intellectual disabilities will have serious, lifelong limitations in functioning. However, with early intervention, appropriate education and supports as an adult, every person with an intellectual disability can lead a satisfying, meaningful life in the community.

How Can Supports Help?

Supports include the resources and individual strategies necessary to promote the development, education, interests, and well-being of a person. Supports enhance individual functioning. Supports can come from family, friends and community or from a service system. Job coaching is one ex-

ample of a support often needed by a new employee with intellectual disabilities. Supports can be provided in many settings, and a "setting" or location by itself is not a support.

What Is the Definition of Developmental Disabilities (DD)?

According to the Developmental Disabilities Act (Pub. L. 106-402), the term developmental disability means a severe, chronic disability that:

1. is attributable to a mental or physical impairment or a combination of those impairments;
2. occurs before the individual reaches age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more of the following areas of major life activity: (i) self care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
5. reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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Before the age of ten, an infant or child with developmental delays may be considered to have an intellectual or developmental disability if his or her disabilities are likely to meet the above criteria without intervention.

How Does the DD Definition Compare with the AAIDD Definition of Intellectual Disability?

The major differences are in the age of onset, the severity of limitations, and the fact that the developmental disability definition does not refer to an IQ requirement. Many individuals with intellectual disability will also meet the definition of developmental disability. However, it is estimated that at least half of individuals with intellectual disability will not meet the functional limitation requirement in the DD definition. The DD definition requires substantial functional limitations in three or more areas of major life activity. The intellectual disability definition requires significant limitations in one area of adaptive behavior. Those with developmental disabilities include individuals with cerebral palsy, epilepsy, developmental delay, autism and autism spectrum disorders, fetal alcohol spectrum disorder (or FASD) or any of hundreds of specific syndromes and

neurological conditions that can result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with intellectual disabilities.

Why Do Some People Still Use the Term “Mental Retardation”?

The term “mental retardation” is an out-dated term that may offer special protections in some states, however, with the passage of Rosa’s Law in 2010, many states have replaced all terminology from mental retardation to intellectual disability. Although some still use the term “mental retardation” to be eligible for some services in a few states, in no case does having the label guarantee that supports will be available. The Arc does not encourage the use of nor promote the term mental retardation. The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are becoming aware of how offensive this term is and The Arc is actively working to make sure the public at large now use the preferred term of intellectual or developmental disability.

References:

American Association on Intellectual & Developmental Disabilities. (2011). *Intellectual Disability: Definition, Classification, and Systems of Supports*, 11th Edition. Washington, DC: American Association on Intellectual & Developmental Disabilities.

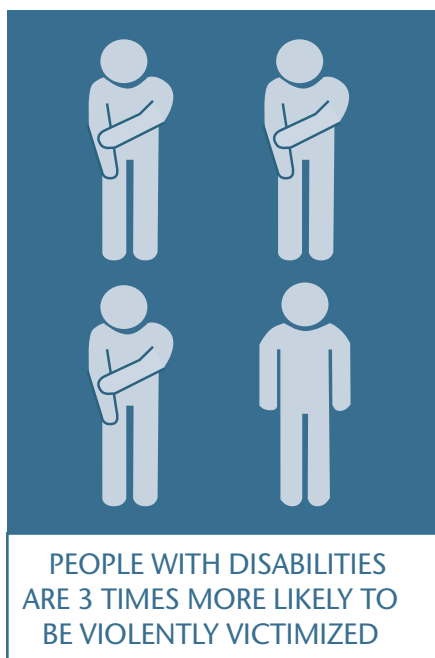
Developmental Disabilities Assistance and Bill of Rights Act of 2000. PL106-402. <http://www.acf.hhs.gov/programs/add/DDACT2.htm>

Larson, S.L. et al. (2000). Prevalence of mental retardation and/or developmental disabilities: Analysis of the 1994/1995 NHIS-D. MR/DD Data Brief. Minneapolis, MN: Institute on Community Integration, University of Minnesota.

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Pathways to Justice™: Get the Facts

INTELLECTUAL DISABILITY (ID)



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Facts

Intellectual Disability (ID) is characterized by significant limitations in both intellectual functioning (IQ of 70-75 or below) and adaptive behavior, which covers conceptual, social, and practical skills. This disability must originate before the age of 18.

Intelligence refers to general mental capability and involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly, and learn from experience. The most common disabilities associated with ID are Autism Spectrum Disorder (ASD), Down syndrome, Fragile X syndrome and Fetal Alcohol Spectrum Disorder (FASD). Somewhere between 1 and 3 percent of Americans have an intellectual disability.

Criminal Justice Involvement

As Victims:

- In 2012, the age-adjusted rate of violent victimization for persons with disabilities was nearly three times the rate among persons without disabilities.
- Children with disabilities are two to three times more likely to be bullied than their peers without disabilities.
- Among different disability types measured, people with cognitive disabilities experience the highest rate of victimization

As Suspects / Offenders:

- While people with ID comprise 1% to 3% of the general population, they represent 4% to 10% of the prison population, with an even greater number in juvenile facilities or jails.
- An estimated 70% of youth with disabilities are involved in the juvenile justice system, and most due to minor offenses.
- Research suggests that sex offenses are common among people with ID. However, this is often due to “counterfeit deviance,” an occurrence of inappropriate sexual behavior due to a cause other than deviant sexual arousal (e.g., lack of education, desire for attention, ignorance).
- People with I/DD are especially vulnerable during police interrogations and are more likely to give coerced confessions, sometimes resulting in execution.

Identification

- Between 85–89% of people with ID have mild impairments, which often makes identification of the disability challenging.

Find out if the person:

- Has a caseworker/friend at a center or group home
- Has an identification that provides a phone number

Intellectual Disability (ID) Fact Sheet

- Appears too open to being led or too eager to please questioning officers
- Has difficulty communicating events in his or her own words (without mimicking responses)
- Seems overly awed or intimidated by the police uniform, badge, gun, etc.
- Seems to agree to everything asked

As victims, individuals may:

- be less likely or less able to report victimization
- think their experience is normal, not label behavior as abusive, and not realize the victimization is a crime
- think the perpetrator is a “friend”
- be unaware of how serious or dangerous the situation is
- not be considered as credible witnesses, even in situations where such assumption is unwarranted
- have very few ways to get help, get to a safe place or obtain victim services or counseling

As suspects, individuals may:

- not want their disability to be recognized (and try to cover it up)
- not understand but pretend to understand their rights
- act upset at being detained and/or try to run away
- say what they think officers want to hear
- be confused about who is responsible for the crime and “confess” even though innocent

Communication Tips

- Find a quiet area free from distractions
- Speak directly to the person
- Keep sentences short
- Use plain or simple language
- Speak slowly and clearly
- Do not touch the person
- Ask for and use concrete descriptions (color, clothing, etc.)
- Do not use ambiguous phrases like “cut it out” or “knock it off”
- Break instructions into the smallest possible parts
- Use pictures, symbols, and actions to help convey meaning

- Identify yourself clearly—make sure to explain your role, perhaps more than once
- Be aware that individuals may not readily recall facts about themselves (e.g., age, birth, date, address)
- Be aware that the person may have multiple disabilities (e.g., deafness, blindness)

Be PATIENT

- Take time giving or asking for information (sometimes a 5 or 10 count to wait for comprehension is helpful);
- Invite the person to use paper and pen to draw or write, or to reduce stress
- Avoid asking confusing or complex questions that require abstract reasoning abilities
- Do not be upset or distracted by noises they may make or other factors that may be a manifestation of their disability
- Do not be upset with a high level of distractability or short attention span
- Do not lie to suspects during interrogations
- Make sure to ask if they want to call someone to accompany them BEFORE initiating an interview
- Ask questions more than once and ask in a different way to gauge comprehension
- Use firm and calm persistence if the person doesn’t comply or acts aggressively
- Don’t ask leading questions and avoid yes/no answers
- Use open body language

Remember

- If the person is the age of an adult, treat them like an adult regardless of mental ability
- Don’t assume that someone is “totally incapable” of understanding, but be willing to slow down when communicating—seek assistance from a disability advocate or agency
- Be respectful!

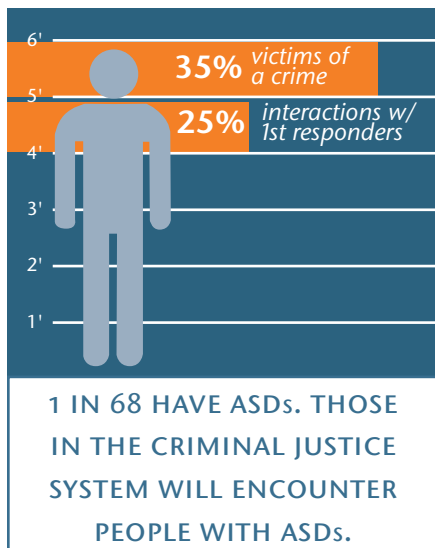
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AUTISM SPECTRUM DISORDER (ASD)



Facts

- About 1 in 68 children has been identified with autism spectrum disorder (ASD) according to estimates from CDC's Autism and Developmental Disabilities Monitoring (ADDM) Network¹
- ASD is not a mental illness, but a neurologically based developmental disability that significantly impairs the ability to communicate and to interact in a socially appropriate manner.
- Some people with ASD have co-occurring disabilities like intellectual disabilities or mental illness.

Criminal Justice Involvement

- With 1 in 68 children (one in 42 boys) being identified with autism spectrum disorder (ASD), law enforcement officers and all involved in the criminal justice system WILL ENCOUNTER those with autism. It is imperative to be trained.
- Individuals with ASD are taught compliance from a young age, increasing vulnerability to victimization.
- A survey of individuals with ASD and their families indicated that 35% had been the victim of a crime and 23% interacted with first responders due to wandering or eloping.²
- Of that 35% who had been the victim of a crime, 17% reported physical abuse or assault, 13% reported being the victim of sexual abuse, 9% reported property crimes, 8% reported sexual assault, and 8% reported neglect; 3% reported being coerced to commit or participate in a crime.³



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Identification

- May not be able to maintain eye contact
- May have sensory issues, including sensitivity to loud noises, bright lights, strong smells, and touch
- May engage in calming behaviors (also referred to as stimming) like hand flapping or rocking
- Processing delays and difficulty following verbal commands or reading body language
- Attempts to run or move away from confrontation
- Compliant—unquestioning regarding rules, agreeable

Autism Spectrum Disorder (ASD) Fact Sheet

Communication Tips

- Do not mistake echolalia—repeating what you say—as rude behavior. It is a typical display of autistic behavior
- Give ample time for a response to instructions or questions
- Do not interrupt self-calming mechanisms behaviors like rocking back and forth, flicking fingers, humming or buzzing, etc.
- Be prepared for a wide range of assistive communication devices, sign language, or writing
- Consider using fixation on a topic or object to help you interact or divert challenging behavior
- Avoid physical contact whenever possible
- Look for signs that the person is unable to fully understand what happened to them when it comes to describing abuse or understanding that their actions were criminal

Individual Story

Reginald “Neli” Latson has an IQ of 69 and ASD. His encounter with law enforcement led to his continual confinement in a “segregation cell”—Virginia’s version of solitary confinement. On the day of the incident, Neli was waiting for the public library to open when a concerned citizen called the police to report a suspicious person. When police arrived, Neli was unable to provide his name and injured an officer in an attempt to flee the confrontation. Since his time in jail, Neli continues to face prosecution for behavior clearly related to his diagnosis of ASD. Neli remains engaged in a preventable “never ending

downward spiral of completely avoidable charges of criminal assault.”⁴

Remember

ASD is a spectrum disorder. Some individuals may appear to be functioning at a high level cognitively due to their extensive vocabulary, language skills and intelligence. They still have a significant social impairment, which criminal justice professionals must account for.

Resources

Autism Society

www.autism-society.org/living-with-autism/how-the-autism-society-can-help/safe-and-sound/

Autism Speaks

www.autismspeaks.org/family-services/autism-safety-project/first-responders/law-enforcement

The Law Enforcement Awareness Network

leanonus.org/

¹ http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?_cid=ss6302a1_w

² (Autism Society, 2006) see: http://www.autism-society.org/files/2014/04/Law_Enforcement_and_Other_First_Responders.pdf

³ (Autism Society, 2007).

⁴ http://www.washingtonpost.com/opinions/ruth-marcus-in-virginia-a-cruel-and-unusual-punishment-for-autism/2014/11/14/9d7f6108-6c3b-11e4-b053-65cea7903f2e_story.html

Pathways to Justice™: Get the Facts

FETAL ALCOHOL SPECTRUM DISORDERS (FASDs)



Facts

Fetal Alcohol Spectrum Disorders (FASDs) are a spectrum of conditions that can occur to a fetus when a mother drinks alcohol while she is pregnant. It is life-long condition with no cure. FASDs affect an estimated 40,000 infants each year.¹ FASDs include fetal alcohol syndrome (FAS), partial FAS (pFAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).² FASDs often lead to problems with adaptive functioning—conceptual, practical, and social skills.

FASDs lead to:

- Abnormal facial features (may or may not be present—are not present in people with ARND)
- Brain damage (including central nervous system abnormalities)
- Hyperactivity and behavior problems, including explosive episodes;
- Lack of impulse control and difficulty with judgement and reasoning
- Vulnerability to peer pressure
- Repeating mistakes multiple times due to disabilities³

Criminal Justice Involvement

- FASD is a high-risk hidden disability in the criminal justice system because the associated behaviors are often assumed to be a choice, rather than related to brain damage
- 35% of individuals with FASD have served time in jail or prison⁴
- 60% of people with FASD have a history of trouble with the law⁵
- 60% of adolescents with FASD experienced school disruptions⁶
- The average age at which children with FASD begin having trouble with the law is 12 years old⁷
- People with FASD are susceptible to false confessions and may not understand the consequences of their actions when taking a plea or testifying
- People with FASD experience higher rates of recidivism

Identification

Most individuals with FASD have IQs in the normal range. They have good expressive language skills, but poor comprehension. They can read, but have trouble writing. They seem to have insights and understanding, but actually have problems with abstract concepts



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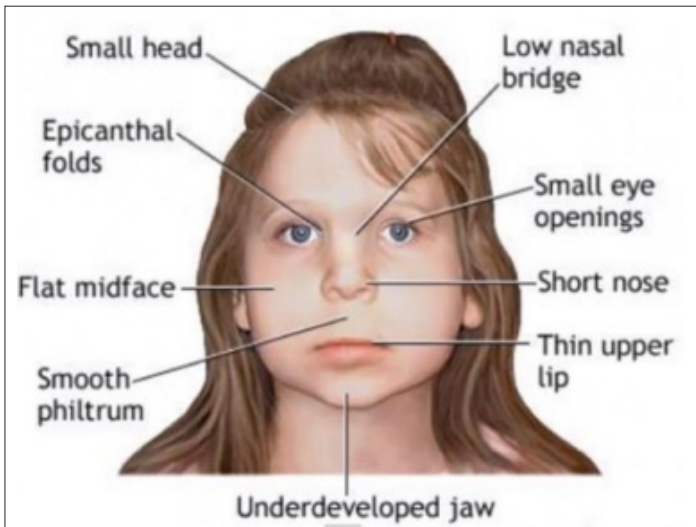
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Fetal Alcohol Spectrum Disorders (FASDs) Fact Sheet



Facial Features⁸

like time and money. Their ability to function in life is well below their IQ. Their emotional level of development is well below their chronological age. They may appear to be smarter than they actually are, and tend to be naïve and gullible.⁹

Communication Tips

- Explain facts in simple, concrete terms, which may need to be repeated (no sarcasm, figurative language, or abstract terms)
- Provide assistance in carrying out instructions given by the court/judge/officer
- Repeat often—memory loss is a problem for people with FASD
- There may be issues meeting probation requirements
- Be aware of limitations in decision making, planning, and prioritizing

Individual Story

A teen with FASD was arrested at school under the new anti-terrorism law for answering a question on a test. The extra credit question was, “What would you

like to change about the school?” His answer was, “Blow it up.” He was taken to jail immediately. This is a boy whom the school district knows has FASD. The principal told the mother that he has 3 A’s on his report card, so he must know right from wrong.¹⁰

Remember

People with FASDs may have IQs in the normal range, but the brain damage they experience heavily influences their decision making ability and behavior, which creates higher risk for becoming involved in the criminal justice system. It is important to consider their high risk of victimization due to emotional immaturity and social naivety and provide the appropriate protections as needed.

Resources

National Organization on Fetal Alcohol Spectrum Disorder

www.nofas.org/criminal-justice

Washington State FASD Legal Issues Resource Center

depts.washington.edu/fasdwa/Legal.htm

¹ (SAMHSA, 2003) (http://www.nofas.org/wp-content/uploads/2014/08/Fact-sheet-what-everyone-should-know_old_chart-new-chart1.pdf)

² http://www.niaaa.nih.gov/sites/default/files/ARNDConferenceConsensusState-mentBooklet_Complete.pdf

³ http://fasdcenter.samhsa.gov/documents/WYNK_Criminal_Justice5.pdf

⁴ (SAMHSA 2007) (<http://www.nofas.org/wp-content/uploads/2014/05/Facts-for-justice-system.pdf>)

⁵ (Streissguth, A.P.; Bookstein, F.L.; Barr, H.M.; et al. 2004. Risk factors for adverse life outcomes in fetal alcohol syndrome and fetal alcohol effects. *Journal of Developmental and Behavioral Pediatrics* 25(4):228-238)

⁶ (Streissguth, A.P.; Bookstein, F.L.; Barr, H.M.; et al. 2004. Risk factors for adverse life outcomes in fetal alcohol syndrome and fetal alcohol effects. *Journal of Developmental and Behavioral Pediatrics* 25(4):228-238)

⁷ (Natalie Novick Brown, Anthony P. Wartnik, Paul D. Connor, and Richard S. Adler, A Proposed Model Standard for Forensic Assessment of Fetal Alcohol Spectrum Disorders, 38 *J. OF PSYCH. & L.* 383, 384 (2010). See more at: <http://www.mofas.org/2014/05/fasd-and-the-criminal-justice-system/#sthash.xDbijulz.dpuf>.

⁸ <http://www.nofas.org/wp-content/uploads/2014/05/FASD-identification.pdf>

⁹ (Teresa Kellerman, Fact Sheet for Law Enforcement, no date). See: <http://www.come-over.to/FAS/Court/>

¹⁰ <http://www.come-over.to/FAS/Court/>

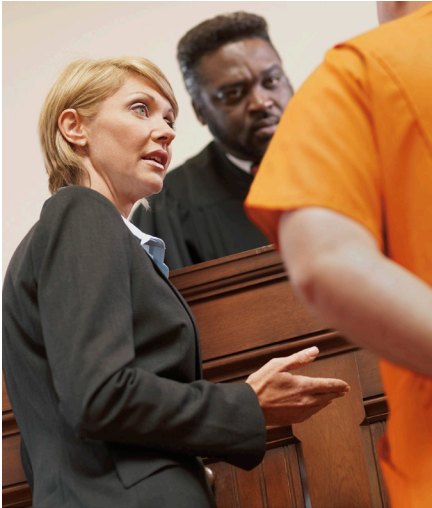
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5 Facts Attorneys Need to Know

When Representing or Working With Citizens with Intellectual and Developmental Disabilities (I/DD)



1. People with I/DD are vulnerable at every stage in the criminal justice system. Be aware of systemic cracks at every point where your client (or witness) comes into contact with the criminal justice system.

2. If competency issues are even remotely possible, test! To be found competent to stand trial, the defendant must have both a rational and factual understanding of the nature of the proceedings against them, and be able to effectively assist counsel in preparing a defense. If there is any doubt, test!

Remember: a diagnosis involves more than just a low IQ score—adaptive functioning is equally important. Adaptive behavior = conceptual skills + social skills + practical skills.

3. People with low IQ are generally unable to waive Miranda. The *Miranda* rights are generally found to be at a 7th grade level—someone with an intellectual disability with an IQ around 70 may read at a sixth grade level or below.

4. False Confessions are much higher among people with I/DD.

Generally, people with intellectual disabilities are:

- More likely to respond to coercion and pressure
- Highly suggestible to leading questions and false information
- Particularly vulnerable to atmosphere
- Unable to understand concepts of blameworthiness and culpability

5. Sex Offenses by a person with I/DD are often not the result of sexual deviance. These offenses generally do not result from unusually strong sexual drive as some mistakenly believe. Often, sex offenses are the result of counterfeit deviance. Factors influencing this inappropriate behavior include:

- Not having enough opportunities for appropriate sexual expression and limited availability of partners
- Ignorance of what is considered appropriate and inadequate social education
- A history of sexual or physical abuse
- Difficulty projecting consequences of behavior

Individuals with disabilities who are charged with sexual offenses may engage in acceptable sexual behaviors but with someone who is not an appropriate age—this is called “age discordant sex play.”



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For more information on this topic, see the Pathways to Justice™ Training.

5 Facts Attorneys Need to Know

When working with a victim/witness or suspect/offender with I/DD, identification, communication, and accommodation are the three keys to better outcomes.

Identification

Check the person's history for and ask "Does/did the person":

- Graduate high school? Have an IEP? Work after high school? Cook, clean, and do laundry?
- Are there past psychological evaluations or other assessments available?

Observe your interactions for possible signs of I/DD including:

Difficulty Communicating

- Seem responsive and able to understand your conversation?
- Have trouble understanding abstract concepts?
- Have difficulty with reading or writing or have a short attention span?
- Struggle to give accurate directions, count money, or tell time?

Consequences of Actions

- Seem aware of the seriousness of the situation?
- Seem eager to please or easily persuaded by others?

Inappropriate Behavior

- Smile inappropriately, make other non-verbal cues that are atypical, have issues with personal space, or make inappropriate facial expressions?

Communication

- Clearly identify yourself—who are you and why are you there? Repeat if necessary
- Use simple wording—no complex terms
- Take time giving or asking for information and repeat questions if necessary
- Always use open-ended, non-leading questions in a straightforward, non-aggressive way
- Consider setting aside additional time pre-trial and during the trial to explain events
- Check with support personnel and the client about assisted communication and devices

Communicating Lengths of time

Consider using a calendar with events important to the person included for reference.

Social Stories

Discuss expectations of behavior in new situations. I.E. A victim/witness might read a story about Sam, who testified bravely in court while wearing a nice suit.

Accommodation

Each courthouse is required to have an ADA coordinator who ensures ADA standards are met.

Pre-Trial

- Be sure to discuss appropriate court room behavior and attire in detail. Visit the court room prior to trial.
- Simplify language on documents
- Ask that client be called first on the docket to avoid additional anxiety.

Trial

- Have everyone talk slowly or write, and repeat information when necessary
- Take periodic breaks
- Present information in concrete, step-by step ways
- Allow videotaped testimony or video conferencing
- Use interpreters, alternative text formats, or note takers to aid in comprehension
- Consider alternative seating arrangements or modified schedules
- Move for a support person or emotional support animal to aid the person during trial

Post-Trial

- Sentencing terms provided at appropriate developmental level
- Safe placement during incarceration or appropriate alternatives to incarceration.

Remember

- Incarceration is disproportionately harmful to people with disabilities.
- Non-traditional communication ability does not indicate unreliability of a witness or victim to testify.
- **Mitigate**—all the life circumstances of a person with a disability should be examined to determine culpability, actual (not perceived) threat to public safety, and appropriate correctional placement.

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