

**Suspects with developmental disabilities
&
the criminal justice system**

**The
Developmentally
Disabled
Offenders
Program**

**The
Arc
of New Jersey**

Intellectual Disabilities

- In 80% of people diagnosed with Intellectual Disabilities, it is not possible to determine the cause.
- In 20% of people diagnosed with Intellectual Disabilities, the cause can be attributed to any more than 300 causes:
 - Heredity (Down Syndrome)
 - Poor pre-natal care
 - Brain injury
 - Intoxication/drug abuse of mother during pregnancy
 - Lead poisoning
 - Poor nutrition
 - Lack of intellectual/physical stimulation

More on Intellectual Disabilities

- A person with Intellectual Disabilities may have difficulty:
 - Reading
 - Writing (does not include signing name)
 - Telling time easily
 - Obtaining a driver's license
 - Recognizing coins and making change
 - Giving coherent directions
- Indicators that would NOT determine Intellectual Disabilities:
 - Appearance
 - Speech
 - Ability to sign name (e.g. statements, confessions, contracts,)

Most suspects are not are:

- not identified at the time of the arrest
- not identified at the time of police questioning
- not identified at arraignment
- some identified are during pretrial
- approximately 10% identified at trial
- many not identified until in prison or even on death row

Myths About Intellectual Disabilities

- All people with Intellectual Disabilities are identical
- People with Intellectual Disabilities do not have the same value as others
- Intellectual Disabilities is a statistic or a number
- People with Intellectual Disabilities can do things if they really try
- People with Intellectual Disabilities cannot do anything

Differences Between Intellectual Disabilities and Mental Illness

- | | |
|---|--|
| 1. Refers to below average intellectual functioning | 1. Has nothing to do with IQ. The person may be a genius or below average. |
| 2. Refers to impairments in social adaptation | 2. The person may be very competent socially |
| 3. Usually occurs during the developmental period (is almost always recognized by school age) | 3. May strike at any time (Most often occurs in early adult or middle years) |
| 4. The person can usually behave rationally at his/her functioning level | 4. The person may vacillate between normal and irrational behavior |

Differences Between Intellectual Disabilities and Mental Illness

- | | |
|---|--|
| 5. The person will not be violent except in those situations that cause violence in persons without intellectual disabilities | 5. The person may be erratic or even violent for no apparent reason |
| 6. Once established, it generally is agreed that it cannot be cured | 6. If treatment is successful, disorders disappear and the person returns to “normal” |
| 7. Education and training is provided to make the person as independent as possible | 7. Main treatment is medication (e.g. anti-depressant, anti-psychotic drugs) and psychotherapy (helps individuals understand their problems) |

Results from a questionnaire given to people with developmental disabilities

- 25% Surveyed think they can be arrested for having a disability
- 58% would disclose that they have a disability when arrested
 - Although this is the survey result, in reality, we find this to be much lower
- 53% would talk to the police before talking to a lawyer
- 75% believe that the **arresting** police officer would protect them

PREVALENCE AND SCOPE OF THE PROBLEM

- People with intellectual disabilities are more likely to confess to crimes they did not commit
- People with intellectual disabilities more likely to plead guilty because they will agree with whatever the lawyer tells them
- Crimes committed by people with intellectual disabilities are often disorganized
- People with intellectual disabilities are often co-defendants in a case because they are followers, not leaders

PREVALENCE AND SCOPE OF THE PROBLEM

- Approximately 2% to 10% offenders in criminal justice system have some form of developmental disabilities
- At least 25,000 people with intellectual disabilities in nation's prisons
- Many become arrested and processed without identification
- Intellectual disabilities is often confused with mental illness
- People with intellectual disabilities go unnoticed by the police, the lawyer, and the court

Disadvantaged Position of Offenders with intellectual disabilities

- Initial Appearance:
Arrested individuals with intellectual disabilities:
 - Often confess quickly
 - React to friendly suggestions and intimidations
 - Say what they think a police officer wants to hear
 - May not understand the implications of Miranda Rights
 - Typically will “**mask**” their disability

Disadvantaged Position of Offenders with intellectual disabilities

- Arraignment
 - Judges, lawyers, and others involved in the criminal justice system fail to recognize the condition of intellectual disabilities.

Disadvantaged Position of Offenders with intellectual disabilities

- Pre-Trial Conference
 - Most defendants with intellectual disabilities:
 - Plead guilty more readily than defendants without intellectual disabilities
 - More often are convicted of the arrested offense rather than a reduced charge
 - Plea bargaining is used less frequently
 - Pre-trial psychological exams are often never requested

Disadvantaged Position of Offenders with intellectual disabilities

- Sentencing
 - Probation and other diversionary non-institutional programs are used less frequently because defendants with intellectual disabilities are often not considered to be good prospects for such programs
 - Appeals of convictions are sought less frequently
 - Post-Conviction Relief (PCR) is rarely requested; only in a small minority of cases

Disadvantaged Position of Offenders with intellectual disabilities

- **Correctional Facility**

Inmates with intellectual disabilities:

- Are slower to adjust to routine
- Have more difficulty in learning regulations, which results in more accumulated rule infractions
- Rarely take part in “rehabilitation” programs, which results in much of their free time being spent in meaningless activities
- Are denied parole more frequently serving on the average two to three years longer than other inmates for the same offense
- Are often the brunt of practical jokes and sexual harassment

Communication Difficulties

Concrete Thinking

- Unable to think abstractly
 - Do not understand metaphor – Ex. “that’s the way the cookie crumbles” Our clients focus on a broken cookie.
- Fail to understand nuances
- Take words at “face value”
 - Everything you say will be taken literally

Communication Difficulties

Communication Through Pleasant Demeanor

- Learn that smiles get approval
 - In school and at home, our clients are treated better when they appear “happy”
- Pleasant façade increases under pressure
 - They will try to “get nicer” when confronted
- May smile at inappropriate times
 - During questioning, arrest or while testifying

Communication Difficulties

Eagerness to Please

- Desire to seek approval
 - Will say what they think you want to hear
- Authority Figures
 - Have been taught to be compliant
- Willing to take blame
 - They will accept blame, especially in situations where co-defendants are involved.

Communication Difficulties

Communication Through Mimicking

- Extremely dependent learning
- Learn by copying others
 - People with intellectual disabilities are affected by their environment. Their actions will mimic the actions of others in a effort to belong.
- Vulnerability to suggestion
 - Will affirm the choice that is suggested last.

Communication Difficulties

Communication Through Protectors

- Survival requires a protector
 - If this person is “bad” they will influence the behavior of the person with Intellectual Disabilities
- The protector thinks/speaks for the person
- Can breed a dominating influence
 - In this scenario the protector uses the person with Intellectual Disabilities. Ex. – A drug dealer who uses our client to deliver drugs.

Communication Difficulties

Communication Through Bluffing

- Desire to hide incompetence
 - Person with Intellectual Disabilities will never tell you they have a disability, can't read, make change or tell time
- Want to be so-called normal
 - They would rather seem like a wise guy than a person who doesn't understand
- False appearance of understanding

Communication Difficulties

Problems with Receptive & Expressive Language

- Illiteracy
 - Most of our clients do not go past a 2nd grade reading level. Many cannot read at all.
- Speech problems
 - Common, but not everyone with intellectual disabilities has a speech impediment.
- Can't follow normal "flow" of talking
 - Conversation/questions should be in shorter parts. Long series of sentences are too complicated and confusing

Communication Difficulties

Limited Memory & Impaired Recall

- Poor long-term memory
- Difficulty recalling routine events
 - They have a hard time remembering things they do not identify as important.
- May try to “mask” the problem

Communication Difficulties

Impulsivity & Short Attention Span

- Actions are often impulsive
 - Fail to see future consequences
- Limited attention span
 - May not understand long questions or may only understand the last part of something
- Reactive thinking
 - Actions reflect immediate solutions to problems without regard to what they mean long term

Characteristics of an offender with intellectual disabilities

1. **May not communicate at age level**
 - o Limited vocabulary; may have speech defect
 - o Difficulty understanding or answering questions
 - o Inability to read or write
 - o Mimics responses or answers
2. **May not behave at age level**
 - o Prefers younger persons for friends
 - o Inappropriate interactions with peers or opposite sex
 - o Easily influenced by and anxious to please others
 - o Difficulty making change, using telephone, telling time
 - o Low frustration tolerance

Characteristics of an offender with intellectual disabilities

3. **May not understand consequences of situations**
 - o Does not appreciate the seriousness of situations
 - o May not reflect on actions; acts impulsively
 - o May try to please others and disregard legality of actions
 - o A follower, not initiator of criminal activity
4. **May not behave appropriately in criminal justice situations**
 - o May not understand rights
 - o May be overly willing to confess
 - o Difficulty recalling facts or details of offense
 - o Tendency to be overwhelmed by police authority
 - o Says what he thinks others want to hear

Profile of the Offender with intellectual disabilities

- Male
- Mild intellectual disabilities (aka mental retardation)
- Economically disadvantaged background
- Unemployed
- Aware of and tries to hide disability
- Crimes committed:
 - Sexually Related Crimes
 - Drug Related Crimes
 - Crimes Against Person (Robbery/Assault)
 - Crimes Against Property (Burglary/Vandalism)
 - Arson
- Ages 20-40
- Usually commits crimes in concert with others
- Usually last to leave the scene of the crime and first to be caught

Effective Communication Tips

Questions that work:

- Tell me what happened?
- When did this happen?
- Who was with you?
- What did they look like?
- What time of the day was it?

person may respond “day” or “work”, find out their schedule to get more details on accurate time of incident

Effective Communication

Be Patient:

- Take time giving or asking for information
- Avoid confusing questions about reasons for behavior
- Repeat question more than once or ask it in a different way
- Use firm calm persistence if the person doesn't comply or acts aggressive

Effective Communication

Be Patient:

- Ask if writing may be easier than speaking.
- When questioning, don't ask questions in a way to solicit a certain response. People with intellectual disabilities are easily confused by leading questions.
- Ask open ended questions rather than phrasing questions for a yes or no response

Effective Communication

More tips:

- Don't assume someone with intellectual disabilities is totally incapable of understanding or communicating
- Treat adults as adults and children as children
- Allow the person time to respond to your questions, let them go at their own pace

Effective Communication

More tips:

- Give him or her the respect you would give any other person
- Anxiety can aggravate a speech disability.
- Communication boards, symbols, and cards for commonly used words greatly aid persons who have difficulty with speech.

How the Developmentally Disabled Offenders Program helps

1. The program locates alternatives to incarceration and provides case management for people with developmental disabilities in the criminal justice system.
2. The program is nationally recognized for its trainings for criminal justice professionals and service providers
3. The program has informative brochures and videos for criminal justice professionals and service providers
4. The program can provide technical assistance and education for criminal justice professionals and services providers

How the Developmentally Disabled Offenders Program helps

5. The program has developed over 200 rehabilitation plans (Personalized Justice Plans) for offenders.
6. The program offers a FREE annual conference in New Jersey to address issues surrounding victims, witnesses, and defendants with developmental disabilities
7. The has experience providing intensive services to juvenile offenders with developmental disabilities in two New Jersey counties.