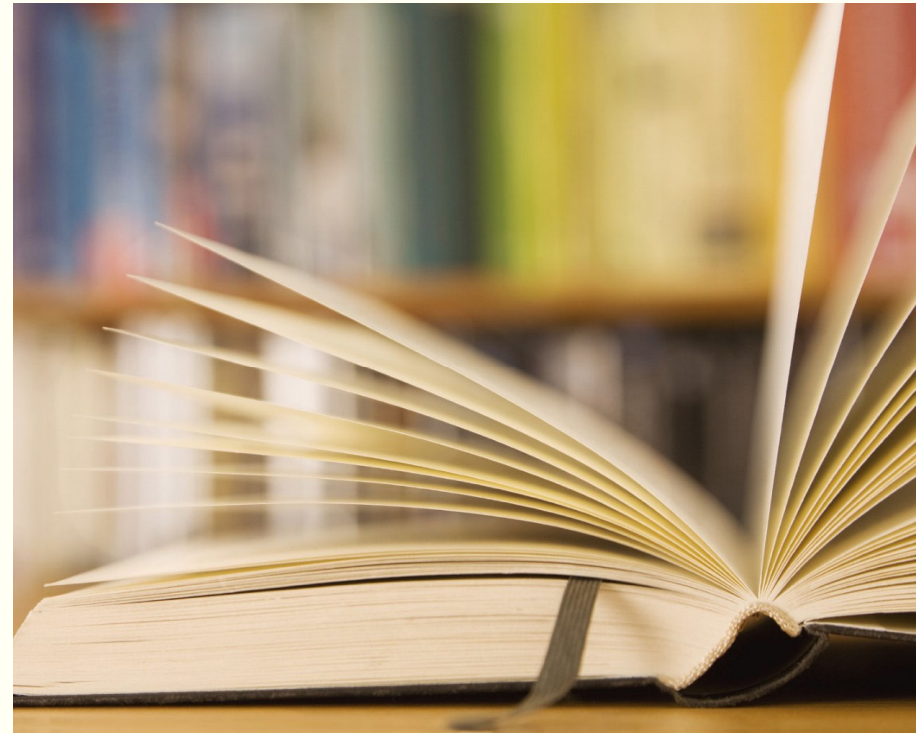


AUTISM SPECTRUM DISORDER AND CRIMINAL RESPONSIBILITY

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Definitions – Diagnostic Criteria

Persistent deficits in social communication and social interaction across multiple contexts, manifested by the following.

- **Social Communication Deficits.**
 - Deficits in social-emotional reciprocity, such as normal back-and-forth conversation, reduced sharing of interests emotions, or affect, or failure to respond to social interaction.
 - Deficits in non-verbal communication behaviors used for social interaction, such as abnormalities in eye contact and body language, or deficits in understanding and use of gestures, to a total lack of facial expressions and nonverbal communication.
- **Restricted, Repetitive, Fixated Interests.**
 - Use of objects or speech in repetitive patterns, such as lining up toys or flipping objects; also, ecolalia.
 - Insistence on sameness; extreme distress at small changes; rigid thinking; rigid behavioral patterns.
 - Highly restricted and fixated interests that are abnormal in intensity or focus.
 - Hyper or hypo-reactivity to sensory input, such as apparent indifference to pain or temperature, aversion to specific sounds, textures, smells; visual fascination with lights or movement.
- Symptoms existing in early childhood.
- Symptoms impair functioning.
- Impairments are not better explained by intellectual disability or global developmental delay.

Statistics/Patterns

- ASD disproportionately affects males at approx. 3 times the rate of females.
- ASD is more evident in males because they show more externalizing behaviors.
- By age 21, 1 in 5 youths with ASD have been stopped and questioned by police.
- Almost 1 in 20 youths with ASD have been arrested by age 21.
- They are also at higher risk for school disciplinary action and psychiatric hospitalization.



Are individuals with ASD more likely to engage in criminal violence?

- Heeranum (2017), studying 295,000 individuals between 15 and 27, did not find individuals with ASD any more prone toward violent offenses than others.
- Much of the risk in individuals with ASD was attributable to concurrent attention deficit/hyperactivity (ADHD) or conduct disorder.
- Individuals with ASD who commit violent crimes tend to be male, have concurrent psychotics disorder, concurrent substance use disorder, or parental criminality.
- Im (2016) reviewed 73 mass shootings from published and on-line sources, covering the years from 1982 to 2015. He found that there was strong evidence of ASD in 8 percent of the cases and some indication of ASD in 21% of the total sample. He noted that the ASD individuals had other risk factors such as physical or sexual abuse, making them different than the typical ASD individual.
- Several studies have found that persons with ASD are over-represented in custody.



**BUT, THOSE WITH ASD ARE MORE LIKELY TO BE
VICTIMS!!**

What features of ASD make these individuals vulnerable to arrest? [Other than odd behavior]

- Difficulty inferring/understanding the thoughts, emotions, and behaviors of other individuals. [This is often called “Theory of Mind.”]
- Difficulty with moral reasoning, i.e., about the personal responsibility of individuals to behave morally, thinking about right and wrong.
- Difficulties with emotional regulation, which includes modulating dysfunctional emotion and controlling impulses.
- Sensitivity to stimulus overload.
- A history of being bullied, heightening their sense of threat from others
- Difficulty expressing empathy for others.
- Lack of insight because of difficulty thinking abstractly.
- Flat affect or blank facial expression may appear threatening.
- Difficulty expressing remorse for how their actions may have caused harm.

Examples

- Difficulty interpreting social cues and the actions of others can lead a person with ASD to overreact or react inappropriately. For example, he may misinterpret the cues or behavior of a female friend, which could result in unwanted sexual aggression or perhaps in stalking.
- Difficulty managing emotions may result in an emotional outburst that frightens or even injures others.
- Fixations or the strength of an obsession can result in trespassing or stealing.

Individuals with ASD tend disproportionately to commit certain categories of offenses

- Arson
- Computer offenses
- Stalking offenses
- Sexual offenses
- Dishonesty offenses

■ Arson

- Siponmaa, et al (2011) reported that 63% of the crimes of arson they investigated had been committed by subjects with diagnoses of AD or ASD.
- Allely (2019) reviewed 11 published papers on firesetting by persons with ASD. She found a higher prevalence of individuals with ASD in convictions for arson.
- Dynamics could be as simple as a fascination with fire., but...
- William Cottrell was a student at CalTech, described as brilliant. With friends who were part of a small group of eco-terrorists, he was convicted of setting fires to destroy or damage sport utility vehicles and Hummers. At trial, his attorneys attempted to put on evidence that he had AD and was duped by his friends, but the Federal judge did not allow the testimony about AD. He testified and came across as arrogant and lacking empathy. He was convicted, but part of his conviction was overturned due in part to the omission of evidence about AD. He served 7 years in Federal prison.

■ Computer offenses

- Cyberspace provides to persons with ASD a safe and unthreatening environment in which they are able to explore their interests and act out their obsessions anonymously and on their own terms.
- Example: Gary McKinnon, a British subject, who between 2001 and 2002 gained unauthorized access to computers belonging to the U.S. Army, Navy, Department of Defense and the National Aeronautic and Space Administration. At one point, he took down the US Army's DC network, taking about 2,000 computers out of service for three days. He had been diagnosed with AD as a child. He said he did so to look for evidence of UFO's, about which he had been obsessed over the course of his life. His case became an international cause. The US sought extradition but the UK resisted, citing his emotional fragility.

■ Stalking

- ASD individuals may engage in stalking as a result of a failure to read or absorb and apply social cues and conventions. The tendency toward fixation may play out with a romantic interest, or some other fixation.

■ Sexual Offending

- These can result from the same dynamics as stalking: a failure to read, absorb, and apply social cues and conventions.
- This can be combined with computer offenses as when a person accesses child pornography.
- Example: MP, saw a woman on the train. When she got off, he followed her and touched her leg and buttocks. When detained, he told the police that he was trying to “get to know the woman.”

■ Dishonesty Offenses

- Most commonly: Stealing objects
- This is usually related to the fixations or obsessions of the person.
- Example: MK and two accomplices entered a cemetery, and MK stole a skull and a memorial vase. On examination, it was discovered that he had been morbidly obsessed with bones and death. He had been diagnosed with ASD as a child, when he had exhibited an obsession with dead insects.

False Confessions

- Between 14 and 25% of convictions involve false confessions (Drizin & Leo, 2004).
- Many of those who confessed falsely had intellectual disabilities (Gudjonsson, 2018), the confession was likely due to lacking the capacity to understand their legal rights and make informed decisions.
- In a study of 40 DNA exonerated men who had falsely confessed in the U.S., 35% were reported to have intellectual disabilities (Garrett, 2011).
- Those at greatest risk were detainees with ADHD or Conduct Disorder (Gudjonsson, 2019), likely due to recklessness and lack of self-control (impulsivity).
- Those with ASD were next highest in likelihood to give a false confession.
- Compliant traits were significantly associated with the number of false confessions.

Vulnerabilities of Autism Spectrum Disorders During Interrogation.

- Autism Spectrum Disorders are characterized by qualitative impairments in social communication and interaction and a restricted or repetitive pattern of behaviors interests, and activities.
- North, Russell & Gudjonsson studied 26 individuals with high functioning ASD and 27 controls, using measures of interrogative suggestibility and compliance as well as measures of anxiety, depression, fear of negative evaluation, and general suspiciousness.
- Those with ASD were more compliant than controls and they also had higher scores on measures of depression, anxiety, paranoia, and fear of negative social evaluation.
- Individuals with ASD may be more eager to please or to avoid conflict and confrontation than controls, and more prone to respond compliantly to requests and demands.

ASD and Competence to Stand Trial

- People with high-functioning ASD or ID may make an effort to appear more competent and “normal” than they are, meaning that the self-presentation they provide regarding their abilities can be misleading.
- From a quarter to almost a half of ASD persons also qualify for ID, and special care should be taken about competence to stand trial.
- Also, a group of those with ASD are highly intelligent, as the above examples illustrate, but they may have serious deficits in social judgment and be subject to influence.

(Greenspan, 2020)

Competency to Stand Trial

	Levels of Understanding Required	Affected in ASD	Ease of Restoring Competence
Knowledge of Actors	Shallow	Not affected	Easy
Knowledge of Case	Medium	Somewhat affected	Easy
Legal Reasoning and Judgment	Deeper	Affected	Difficult
Receptive Processing of Testimony	Medium	Affected	Difficult
Expressive Ability to Testify	Medium	Likely affected	Difficult
Ability to Resist Undue Influence	Medium	Likely affected	Difficult

FIGURE 2.4 Impairments and restorability of skills involved in ASD legal competence.

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- Restoration Programs may focus more on the most concrete aspects of competence.
 - For adults, Greenspan recommends the MacCAT-CA, published by PAR.
 - For juveniles, I recommend the Juvenile Adjudicative Competency Interview (Grisso)

Defenses

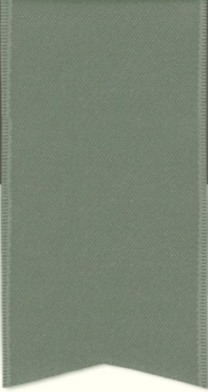
- The Insanity Defense
- Self-Defense
- Imperfect Self-Defense
- Did not possess the requisite mental state
 - To form Intent
 - Ability to Premeditate/Deliberate




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- ASD offenders often have a diminished ability to reflect on the social significance of their actions or the impact on others. This impairs their ability to appreciate the potential of harm or the likelihood of legal sanction. They may wholly believe their actions to have been appropriate, defensible, and entirely justified. (Sullivan, 2017)



EVERY CASE IS DIFFERENT AND SHOULD BE
EXAMINED BASED ON THE UNIQUE DEFICITS
OF THE PERSON AND THEIR MENTAL STATE
AT THE TIME OF THE OFFENSE.



THE COURT WILL NEED TO BE SATISFIED THAT THE OFFENDING WAS GENUINELY INFLUENCED OR CAUSED BY THE DISORDER, RATHER THAN CO-EXISTING WITH IT IN CIRCUMSTANCES IN WHICH THE OFFENDER KNEW WELL THE WRONGFULNESS OF THEIR CONDUCT.



EXPERT OPINIONS ABOUT THE CONNECTION BETWEEN ASD AND THE OFFENSE IS MORE COMMONLY USED AS MITIGATION AT THE SENTENCING PHASE OF CRIMINAL PROCEEDINGS.

The Forensic Evaluation

▪ Document Review

- Audio/Video of Defendant's statement.
- Police Reports(s) of the Incident.
- School Records/ IEP Plans
- Medical Records/Neurologist's Reports
- Mental Health and Therapy Records
- Previous Offenses/Records
- Dependency Court Records, if any.
- Custody Evaluation Report, if any.



FORENSIC INTERVIEW

May need multiple interviews or multiple hours.
Building rapport/trust is essential.



Interview Considerations

- The client may be anxious about a new adult, and mistrustful.
- The client may have deficits in social communication which make it difficult to say how he felt at the time of the offense, or what he was thinking.

Psychological Testing – Broad Band

- Cognitive Abilities
 - Wechsler Adult Intelligence Scale (WAIS-IV): surveys cognitive strengths and deficits and gives standardized scores for verbal comprehension, perceptual reasoning, working memory, processing speed, and gives an overall IQ, called the Full Scale IQ.
- Adaptive Abilities
 - Adaptive Behavior Assessment System (ABAS-III): Evaluates adaptive behavior in multiple areas, such as the practical, everyday skills required to function and meet environmental demands, communicate, and function socially.
- Test for Co-Morbid Disorders
 - Minnesota Multiphasic Personality Inventory (MMPI-2, MMPI-2RF, MMPI-3)
 - Personality Assessment Inventory.
 - Either can give information about the possibility of Psychosis, Substance Addiction, Mood Disorder, PTSD, or other co-morbid disorder that may have affected mental state at the time of the offense.

Psychological Testing – Narrow Band, for ASD

- **Social Responsiveness Scale (Second Edition (SRS-2)).**
 - Identifies the social impairments associated with ASD and quantifies severity. Subscales parcel results into social awareness, social cognition, social communication, social motivation, restricted interests/repetitive behaviors.
- **Behavior Rating of Executive Functioning (BRIEF-A)**
 - Assesses nine aspects of executive functioning organized into “Behavioral Regulation” and “Metacognition.” Behavioral Regulation measures the individual’s ability to maintain appropriate control over his thoughts, behaviors and emotions. The “Metacognition Index” reflects the ability to manage one’s attention and problem-solving.
- **Autism Diagnostic Observation Schedule (2nd Ed.)**
 - This is another measure of social communication and social behavior in adults. A sample statement from this test is “Mr. X demonstrated repetitive speech typical of individuals on the Autism Spectrum with frequent references to highly restricted interests. He lacked social reciprocity and appeared to be childlike and naïve. He was markedly impaired in social communication.”



DISTINGUISH ASD FROM PSYCHOPATHY/SOCIOPATHY

This will change the way the Prosecutor and Judge or Jury view the Defendant

Prosecution Strategy and Defense

Prosecution

- ASD is mild and does not meet the legal standard for insanity, nor render him unable to form the intents of the crime.
- The defendant actually has ASPD and not ASD. ASPD individuals:
 - Lack of conscience.
 - Hostile, callous and manipulative
 - Lacks empathy
 - Impulsive
 - Criminal orientation.

Defense

- Testing and historical records establish severity.
- ASD can look like ASPD but is not the same thing.
 - In ASPD, the criminal behavior is often planned and predatory, as opposed to a misunderstanding of a social situation or a result of a fixation.
 - In ASPD, deficits tied to the disorder cause emotional poverty, not a hostile approach to others.
 - Usually no criminal orientation.

Goals and Ethics for Forensic Examiners in ASD

- To arrive at a diagnosis of ASD that is soundly and empirically based.
- To explain in clear language what the diagnosis means for the functioning of the person.
- To dispel misimpressions of the individual, explain odd or troubling behavior.
- To educate about the possible overlap between ASD, ADHD, major mental disorder symptoms, and personality disorder.
- To help the trier of fact to appreciate how the ASD symptomatology may have relevance for conduct, and how deficits may have impaired their insight about the impact of their behavior on others.
- To provide this information in a way which does not further demean or stigmatize the person.

Individuals with ASD as Witnesses

- May come across as aloof, disinterested, or even imperious.
- May be overwhelmed by stimulus overload, or by confrontation.

Does testimony about ASD influence judicial decisions?

- Mock Juror Research
 - The majority of mock jurors provided with a diagnosis and background information about ASD considered the diagnosis to be a mitigating factor in assessing the defendant's responsibility and legal consequences (Maras, Marshall and Sands, 2019).
- Judges
 - Given a case study of a defendant with high-functioning ASD, judges were likely to consider ASD as both a mitigating and aggravating factor and to consider alternatives beyond prison sentences for an individual with ASD (Berryessa, 2016).

Violence Risk Assessment for Individuals with ASD: Sensitive Areas

- Your expert should look for:
 - A developmental history that includes problems relating to peers, early ritualized intense interests, and environmental stressors (e.g., child neglect or abuse, bullying).
 - Social communication deficits.
 - Marked naivete.
 - Problematic intense interests (e.g., fixation with weapons or violence).
 - Stressors and provocative contexts (e.g., current loss/humiliation).
 - Grievance(s).
 - Co-morbid Major Mental Disorders (e.g., Paranoia, PTSD).
 - Co-morbid Psychopathy.
 - Planning (evidence for preparatory actions)

Sentencing Considerations

- In prison, individuals with ASD are more vulnerable to bullying, social isolation, victimization and exploitation (Allely, 2015a)
- ASD is associated with reduced levels of empathy from prison staff (Glaser & Deane, 1999)
- The custodial environment and regimen itself also presents numerous difficulties for ASD offenders. This includes lack of appropriately skilled support staff.



CASE EXAMPLE



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For Questions/Consultation

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Additional references from this presentation are available upon request.