

Criminal Justice Advocacy Program



- As with the general population, most individuals with intellectual or developmental disabilities are law-abiding citizens
- Though crime rates generally are down, sometimes individuals with DD become involved as defendants accused of crimes, as victims or as witnesses

- There is no bar to being charged or prosecuted because you have an I/DD
- Issues related to competency at the time of the crime, ability to understand criminal proceeding, and availability of services

PROBLEM

- Many criminal justice system professionals lack an understanding of DD and ID and have no access to referral sources, technical assistance or training.
- Nonetheless, cognitive impairment and deficits can limit meaningful interaction with the criminal justice system

RESULT

- Lack of access to equal justice
- Lack of access to fair treatment
- Lack of access to basic constitutional rights

PREVALENCE AND SCOPE OF THE PROBLEM

- Approximately 10% in criminal justice system as opposed to 3% of general population
- At least 25,000 people with intellectual disabilities in nation's prisons
- Many become arrested and processed without identification
- Intellectual disability is often confused with mental illness
- People with developmental and intellectual disabilities may go unnoticed by the police, the lawyer, and the court

The Criminal Justice Advocacy Program

- Provides alternatives to incarceration and case management for people with developmental disabilities in the criminal justice system
- Develops nationally recognized training program for criminal justice professionals and service providers
- Provides technical assistance and education for criminal justice professionals

Criminal Justice Advocacy Program

- Program Staff:
 - Jessica S. Oppenheim, Esq., Program Director
 - Three and a half Case Managers handling approximately 140 cases on a statewide basis
 - Administrative Assistant

Program Accomplishments

- In existence in NJ since 1985.
- The only program of its kind in NJ and one of a handful nationwide.
- Annual conference in New Jersey to address issues surrounding victims, witnesses, and defendants with developmental disabilities
- Nationally recognized training program and targeted brochures
- New Pilot Project in Atlantic County for Re-Entry

TRAINING AND TECHNICAL ASSISTANCE

- Program provides training to DDD Case Managers and Staff about the criminal justice system
- Program provides training to law enforcement, bar and judiciary personnel and community service providers
- Program provides technical assistance to DDD, community providers and attorneys

Person First Language

- Important Component of training and education
 - Everyone wants to be seen as a person, not as their disability
 - Changed name of program
 - Providing effective language to law enforcement and criminal justice system members improves communication

Victims of Crime with Developmental Disabilities

- The rate of victimization among this population is extremely high. People with developmental disabilities are 4 to 10 times more likely to be victimized than the general population.
- Crimes go unreported, may not be prosecuted or handled "internally".
- Victims with developmental disabilities receive less follow up than non-disabled victims. Victim assistance services are often not equipped to handle this population (physical and attitudinal barriers).

Victims of Crime with Developmental Disabilities

- The rate of sexual assault in the general population is:
 - 20% of Females
 - 5-10% of Males
- Studies estimate the rate of sexual assault for people with intellectual impairments is:
 - From 39 to 90% of Females
 - From 16 to 30% of Males

Victims of Crime with Developmental Disabilities

- Abusers may abuse as many as 70 people before getting caught
- For people with disabilities, there is a high probability of repeat victimization
 - Two studies found 50% of women with disabilities had been sexually assaulted 10 or more times
- Perpetrators are known by the victim (97-99%)
- The more severe the disability the greater the risk for victimization.

Victims of Crime with Developmental Disabilities

- **Don't know they are abused**
 - > are not taught to recognize abuse
- **Overly compliant**
 - > lack social skills to make decisions
- **View everyone as friends**
 - > very trusting
- **Limited social opportunities**
 - > "social outcast"
- **Low self-esteem**
 - > no power over their lives
- **Lack of assertiveness**
 - > lack the ability to say no

Victims of Crime with Developmental Disabilities

- People with disabilities may not be viewed as credible witnesses in court:
 - Susceptible to demands of authority
 - May be seen as appearing confused/disoriented
 - Cross-examination is designed to confuse a witness
- Issues around special accommodations in court to assist with testimony
 - Advocates
 - Specially trained police officers
 - Use of videotaped or closed circuit TV

Self Advocate Questionnaire

- 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

Attorney Questionnaire

- 47% think that Paranoid Schizophrenia and Personality Disorder are developmental disabilities
- 63% think a defendant with an intellectual disability would have difficulty signing his/her name
- 60% think a client's appearance would indicate intellectual disability
- 83% think a client's speech would indicate intellectual disability

Translates to:

- Sentencing complications
 - 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

Offenders with Developmental 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

Profile of Offender with Developmental Disabilities



Profile of the Offender with Developmental Disabilities

- Male
- Mild intellectual disability
- 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

Problems encountered

- May not understand rights as read to them
- May seek to please authority figures so say what they think they want to hear
- Prone to regress out of fear
- May hide their disability and so go unnoticed by counsel
- Try to parrot responses

- Statistically, offenders with developmental or intellectual disabilities are more likely to plead guilty and more likely to plead to original charges than non-developmentally disabled cohorts

In Prison

- Often spend more time incarcerated than non-disabled counterparts due to inability to conform to disciplinary rules and regulations
- Lack of appropriate programs reduces likelihood of parole

Disability Rights in Prisons

- Pa. Dept of Corrections v. Yeskey, 524 U.S. 206 (1998)
 - ADA requirements apply to all State prisoners

Clark v. California

- As a result of discovery motions filed in a class action lawsuit a consent decree was entered into between plaintiffs and prison officials to develop and implement a plan to screen inmates for I/DD
- Must provide I/DD inmates with safe housing and supportive services

- In order issued by District Court Judge in the Clark case: "evidence demonstrates that mentally retarded prisoners and those with autism spectrum disorders are verbally, physically and sexually assaulted, exploited and discriminated against in California prisons"

Assisting Our Clients

- Identify existing services:
 - Disability Service Providers: residential providers, supported employment services, respite care, recreational programs.
 - Psychologists, therapists and programs that address offender issues: sexual offending behavior, drug/alcohol addiction.

Re-Entry

- What do we mean by re-entry?

Obstacles faced by individuals with I/DD and criminal history re-entering community

Technical Assistance and Transition Specialist

Successful and Permanent Re-Entry of Criminal Offenders with Intellectual and Developmental Disabilities

Atlantic County Pilot Project
The Arc of NJ and The Arc of Atlantic County

FUNDED BY A GENEROUS GRANT FROM THE NEW JERSEY COUNCIL ON DEVELOPMENTAL DISABILITIES

- Housing: HUD: Lifetime ban on HUD housing exists only for lifetime registration sex offenders and offenders who have manufactured meth while in public housing
- MAY ban drug and/or alcohol abusers
- Jobs: EEOC regulations

Sex Offenses

- More than half of the client base has committed a sex offense

Megan's Law Impact

- Registration requirements
- Community Notification
- Parole supervision for life
- Sexually Violent Predator commitment

Personalized Justice Plans

- PJP forms:
 - Address multiple areas and can be tailored to meet the needs of each individual.
 - Draft a plan: include the input of all involved parties – most importantly the offender! If the person is not willing to follow the recommendations of the PJP it will not work!

Personalized Justice Plans

- Finalize the the plan and condense in to a letter.
- Detail all services in the PJP, specific facts of the case, describe the person's disability and provide contact information.
- Share letter with attorney prior to court for their review and comment.
- Send letter directly to the judge with copy to all parities.
- Appear in court if possible to explain PJP in person.

Personalized Justice Plans

- **PJP accepted:** client is placed on probation with PJP as a condition.
 - Contact probation officer or department.
 - Go with client to probation (if possible) or speak with probation officer via telephone the day your client reports.
 - Provide progress reports to probation officer as requested.

Personalized Justice Plans

- Client found incompetent to stand trial (IST):
 - Offer to monitor case for set time frame and provide progress reports to court as requested.
 - If person is willing to comply with PJP voluntarily, establish services for person and monitor progress for 6 to 12 months.
 - With no legal obligation to comply with PJP, clients found IST may not follow through with services.

Personalized Justice Plans

- Probation or community placement not an option/not accepted by the court.
 - Prison: Contact social work department. Tell them of inmate's disability. Request placement out of general prison population.
 - Treatment facility/civilly committed: Follow up with facility. Ask to be notified when person is scheduled for release so community supports can be identified.

I/DD System

- Not historically created to work with criminal offenders
- Community Service Providers often struggle with how to address the needs of clients involved in the criminal justice system
- No incentive to provide housing and services to offenders with I/DD, often considered "high risk"

What We Know

- Research tells us that when any criminal offender has supervision and is gainfully employed or has activities in the community, recidivism is reduced
- Offenders who have I/DD receive little specialized attention from supervisory systems
- Offenders who have I/DD face more challenges becoming part of the work force and finding adequate housing

Challenges to Success

- Because of these specialized challenges in finding appropriate housing, finding appropriate job training, and jobs, and in finding good connections in the community
- **CRIMINAL OFFENDERS WITH I/DD ARE OFTEN UNSUCCESSFUL AND GO BACK TO PRISON**

Role Expansion

- CJAP continues to adapt to the needs of the population including a move into the Re-Entry area.
- Clients who are incarcerated in county jail, state prison and the MSU must be re-integrated into the community.
- Clients who have ongoing issues with the municipal criminal justice system but avoid jail/prison need ongoing support to remain in the community.

Improving the System

- Mutual understanding and better communication between law enforcement and social services
- Understanding on the part of social service agency workers and criminal justice professionals about how the system works and what options are available to ensure success in the community

Questions?

- THANKS FOR LISTENING
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