

People with Intellectual Disabilities in the Criminal Justice Systems: Victims & Suspects

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What Is The Arc's Position?

People with intellectual and/or developmental disabilities who are victims, suspects or witnesses, like other residents of the United States, have the right to justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations as necessary. Read the full Position Statement at <http://www.thearc.org/page.aspx?pid=2350>.

To become an effective advocate, read The Arc's Justice Advocacy Guide at <http://www.thearc.org/document.doc?id=2554>.

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How Do People with Intellectual Disabilities Get Involved in the Criminal Justice System?

People with intellectual, cognitive or developmental disabilities get involved as both victims and suspects/offenders more often than individuals without disabilities. Some researchers have found that people with I/DD have a 4 to 10 times higher risk of becoming victims of crime when compared to those without disabilities (Sobsey, 1994). Children with any type of disability are 3.4 times more likely to be abused compared to children without disabilities (Sullivan & Knutson, 2000). In 2008, The National Crime Victim Survey found that people with disabilities experience higher rates of violence than people without disabilities (40 victimizations per 1,000 persons with disabilities compared to about 20 per 1,000 without disabilities), and that the rate of victimization was twice as high for people with disabilities. Another alarming finding was that people with cognitive disabilities (or intellectual disabilities) had the highest risk of violent victimization (Harrell & Rand, 2010).

Individuals with this disability also constitute a small, but nonetheless growing percentage of suspects/offenders within the criminal justice system. While those with intellectual disabilities comprise 2% to 3% of the general population, they represent 4% to 10% of the prison population, with an even greater number of those in juvenile facilities and in jails (Petersilia, 2000). One study that looked at the number of people with disabilities in state and federal prisons found that fewer than 1% of inmates had physical disabilities while 4.2% had mental retardation (referred to in this fact sheet as intellectual disabilities) (Veneziano & Veneziano, 1996).

How Do They Become Victims of Crime?

Factors such as impaired cognitive abilities and judgment, physical disabilities, insufficient adaptive behaviors, constant interactions with "protectors" who exploit them, lack of knowledge on how to protect themselves and living and working in high-risk environments increase the vulnerability to victimization (Luckasson, 1992).

Crimes committed against people with intellectual disabilities are often la-

beled as abuse and neglect (rather than assault, rape or murder), which understates the criminal victimization problem. Many victims with intellectual disabilities may not report crimes because of their dependence on the abuser for basic survival needs. When victims do report crimes, police and court officials may not take the person's allegations seriously or be reluctant to get involved. Additionally, people with intellectual disabilities often don't have access to the types of support and resources they need to prosecute.

What Types of Crime Do People with Intellectual Disabilities Commit?

Some people with intellectual disabilities commit crimes, not because they have below-average intelligence, but because of their unique personal experiences, environmental influences and individual differences. During the early 1900s, some professionals believed that individuals with intellectual disabilities were predisposed to becoming criminals due to their disability. This view lost support during the 1930s when its leaders rescinded their original beliefs and the focus on causes of crime shifted from biological reasons to psychological and sociological ones. Research from the mid-80s to the 1990s found that the types of crime committed range from property crimes, like theft or robbery, to physical and sexual assault. Some have been accused

of murder as well. One researcher found that many who committed sexual offenses were victimized sexually, and that their experience as a victim was linked to their later experience as the offender (Firth, 2001).

What Problems Do They Face as Victims or Suspects?

Almost all people with intellectual disabilities now live in the community and are susceptible to becoming involved in the criminal justice system as suspects and/or victims. As suspects, individuals with this disability are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or the consequences of their involvement. They may also have a strong need to be accepted and may agree to help with criminal activities in order to gain friendship. Many individuals unintentionally give misunderstood responses to officers, which increase their vulnerability to arrest, incarceration and possibly execution, even if they committed no crime (Perske, 2003).

Considering such extreme disadvantages, it is not surprising that people with intellectual disabilities are more likely to be arrested, convicted, sentenced to prison and victimized in prison. Once in the criminal justice system, these individuals are less likely to receive probation or parole and tend to serve longer sentences due to an

inability to understand or adapt to prison rules. Some common responses from those with intellectual disabilities that may affect their ability to protect their rights include the following:

As suspects, individuals may:

- not want their disability to be recognized (and try to cover it up)
- not understand their rights but pretend to understand
- not understand commands, instructions, etc.
- be overwhelmed by police presence
- act upset at being detained and/or try to run away
- say what they think officers want to hear
- have difficulty describing facts or details of offense
- be the first to leave the scene of the crime, and the first to get caught
- be confused about who is responsible for the crime and “confess” even though innocent

As victims, individuals may:

- be easily victimized and targeted for victimization
- be less likely or able to report victimization
- be easily influenced by and eager to please others
- think that how they have been treated is normal 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

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such concern is unwarranted

- have very few ways to get help, get to a safe place or obtain victim services or counseling

Are People with Intellectual Disabilities Exempt from the Death Penalty?

The U.S. Supreme Court issued a landmark ruling prohibiting the execution of individuals with intellectual disabilities on June 20, 2002. In its 6-3 decision on *Atkins v. Virginia*, the Court held that it is a violation of the Eighth Amendment ban on cruel and unusual punishment to execute death row inmates with intellectual disabilities. However, the Court did not specify what is meant by “mental retardation” so each state must determine how it will be defined. Laws vary from state to state on how a defendant can prove whether or not he or she has this disability. Most states require an IQ score of 70 or less and proof that the condition existed before age 18. States also vary widely regarding whether it is the judge or jury who decides if the defendant has intellectual disabilities.

How Can the Rights of Someone with an Intellectual Disability Be Protected?

Education and training is vital for individuals with intellectual disabilities are going to receive equal justice. Children, adolescents and adults with this disability must learn about the possibility of meet-

ing a police officer, how to protect their rights during encounters with police and how to speak up if they are being victimized (Davis, 2006).

To get started, read through The Arc’s Justice Advocacy Guide at www.thearc.org to get an idea of how you can begin providing information and training in your own community.

Cross-training needs to occur among all professionals in schools, police departments, victim assistance agencies and in the courtroom as a way to start opening the lines of communication between these systems. Consider contacting your school’s special education department and request that this training be offered if it is currently unavailable. Contact your local police department and ask for the training officer or police chief as well as the victim assistance department. If intellectual disabilities is not included in their training, request that it be provided as a separate module (apart from mental illness) so officers and victim advocates will not confuse the two disabilities. Educate court officials by contacting the court liaison and requesting a meeting with the judge to see what training is currently provided. Building these alliances can prepare the community for situations involving people with intellectual disabilities who come in contact with the criminal justice system either as victims or suspects. Such preparation enables the criminal justice system to more effectively protect

the rights of those with intellectual disabilities.

Some chapters of The Arc provide training on criminal justice issues for all professionals mentioned above, as well as for individuals with disabilities, as well as direct advocacy for people with I/DD who find themselves caught up in the criminal justice system as either a victim or suspect. For more information, contact your state or local chapter of The Arc or The Arc’s national office.

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