

Alternative to Incarceration for Offenders with I/DD

Criminal Justice Advocacy Program
The Arc of New Jersey

Jessica Oppenheim, Esq.



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Welcome!

- First time using webex?
 - You can communicate with other attendees or the host in the **Chat Box** and seek technical assistance if needed.
 - You can type questions about the material presented in the **Q&A** section.
- Today's webinar will be **recorded and archived** on the NCCJD website. Please keep this in mind when sharing information and experiences during the webinar.



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Polling Question

True or False:

People with I/DD are more likely to commit criminal offenses than people who do not have an I/DD.



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Polling Question

True or False:

People with I/DD are more likely to have criminal charges dismissed than their co-defendants without a disability.



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Polling Question

True or False:

Employment and support services can have a positive impact on future recidivism.



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Polling Question

True or False:

Criminal justice professionals are well-versed in the obstacles faced by individuals with I/DD and understand the services that can help support them in the community.



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Alternatives to Incarceration for Offenders with I/DD



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ISSUE

- As with the general population, most individuals with intellectual or developmental disabilities are law-abiding citizens
- Crime is a problem in the U.S. and sometimes individuals with DD or ID become involved as defendants accused of crimes, as victims or as witnesses.



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Identifying Offenders

- Difficult to identify
- We know that people with I/DD comprise about 3% of general population
- We know that people with I/DD comprise about 9% of the prison population



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Scope of the Problem

- At least 25,000 people with I/DD in nation's prisons
- 1 out of every 500,000 prisoners
- Many become arrested and processed without identification
- I/DD is often confused with mental illness
- People with I/DD go unnoticed by the police, the lawyer, and the court



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Criminal Justice Professionals

- 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



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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”



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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



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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**



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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



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- 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



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Disadvantaged Position of Offenders with DD/ID

- Sentencing
 - Probation and other diversionary non-institutional programs are used less frequently because defendants with IDD 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



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PROBATION: RISK FACTORS

- Possible problems with client's ability to follow directions
- Failure to attend required counseling
- Not reporting to the probation officer
- Violate Probation



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Post-Incarceration: Re-Entry

- **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



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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



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Criminal Justice Advocacy Program

- Program Staff:
 - Jessica S. Oppenheim, Esq., Program Director
 - Three and a half Case Managers handling approximately 100 cases on a statewide basis
 - Administrative Assistant



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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
- Awarded grant for a pilot transitional services program in Atlantic County underway now.



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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.



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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!



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Personalized Justice Plans

- Finalize 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 parties.
- Appear in court if possible to explain PJP in person.



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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.



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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.



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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.



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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



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Characteristics of People with Developmental Disabilities

- Impaired language
- Memory problems
- Attention Span
- Poor ability to control impulsivity
- Self-concept (denial of disability)
- Suggestibility
- Lack of social skills
- Logical reasoning (causation)
- Strategic thinking (planning)
- Foresight (predicting)
- Moral development is limited by disability
- Communication difficulties



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How These Limitations Impact on Prosecution

- Competence to waive Miranda warnings
- Competence to stand trial: 2C:4-2
- Ability to comply with probation or parole conditions



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State v. C.M.: A Case Study

- Burlington County Office of the Public Defender-A.D.P.D. representing C.M.
- Charged with over 15 counts of animal abuse, arson, theft and vandalism



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C.M. Background

- Diagnosed with FASD at 18 mos.
- Classified in school system
- Additional diagnosis of mental illness after puberty



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Obtaining DDD Services

- Adoptive parents contacted DDD
- Completed DDD Application (available on line)
- Initial denial: Appealed decision
- Wanted Independent Housing for C.M.-
What Happened!



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Criminal Offense

- Combination of poor placement, stopping medication, bad friends:
 - Crime Spree



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Coordination of Services

- ADPD and family made contact with CJAP
- By coordinating with CJAP, DDD, attorneys and the court (MH probation), housing and services obtained



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Sex Offenses

- More than half of the client base has committed a sex offense
- Both adult and juvenile
- Run the gamut of offenses but rarely involve force



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Megan's Law Impact

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



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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



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Disability Rights in Prisons

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



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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



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- 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”



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Thanks for Your Attention

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Next Webinar

- Attend the next webinar on **September 25, on Fetal Alcohol Spectrum Disorder (FASD)—A Hidden Disability.**
- Sign up to receive email alerts
- Use I&R/TA service, and refer others
- Share your story and raise awareness

Contact us at:

NCCJDinfo@thearc.org



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Questions?

Survey:

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