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
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 Amend-
ment ban on cruel and unusual
punishment to execute death row
inmates with intellectual disabili-
ties. 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 wheth-
er or not he or she has this disabil-
ity. Most states require on 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 intel-
lectual disabilities.

How Can the Rights of Someone with an Intellectual Disability Be Pro-
ected?
Education and training is vital if
individuals with intellectual dis-
abilities 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 assis-
tance agencies and in the court-
room as a way to start opening the
lines of communication between
these systems. Consider contact-
ing 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 disabil-
ities is not included in their
training, request that it be pro-
vided 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 train-
ing is currently provided. Building
these alliances can prepare the
community for situations involving
people with intellectual disabili-
ties who come in contact with the
criminal justice system either as
victims or suspects. Such prepara-
tion enables the criminal justice
system to more effectively protect
the rights of those with intellectual
disabilities.

Some chapters of The Arc pro-
vide training on criminal justice
issues for all professionals men-
tioned above, as well as for indi-
viduals 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.

References:
Guide: An Advocate’s Guide to Assisting Victims
&Suspects with Intellectual Disabilities. The Arc
of the U.S: Washington, D.C.
Firth, H., Balogh, R., Berney, T. Bretherton, K.
ogy of sexual abuse in young people with intel-
lectual disability. Journal of Intellectual Disability
Research 45 (3), 244-252
People with Disabilities. Bureau of Justice Statis-
tics. U.S. Department of Justice
Luckasson, R. (1992). People with mental re-
tardation as victims of crime. In R.W. Conley, R.
Luckasson, & G.N. Bouthilet (Eds.), The criminal
justice system and mental retardation (209-
boy. Mental Retardation, 41 (1), 61-64
Petersilia, J. (August 2000). Doing justice? Crip-
al offenders with developmental disabili-
ties. CPRC Brief, 12 (4), California Policy
Research Center, University of California.
lives of people with disabilities. Baltimore: Paul
H. Brookes Publishing Co.
Sullivan, P. & Knutson, J. (2000). Maltreat-
ment and disabilities: A population-based
epidemiological study. Child Abuse & Neglect,
24 (10), 1257-1273.
inmates. In M. McShane & F. Williams
Encyclopedia of American Prisons. New York:
Garland Publishing.

Achieve with us.

For more information on this and other topics, visit www.thearc.org