Alternative to Incarceration for Offenders with I/DD

Criminal Justice Advocacy Program
The Arc of New Jersey

Jessica Oppenheim, Esq.
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.
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.
Polling Question

True or False:
People with I/DD are more likely to have criminal charges dismissed than their co-defendants without a disability.
Polling Question

True or False: Employment and support services can have a positive impact on future recidivism.
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
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.
Identifying Offenders

• Difficult to identify

• We know that people with I/DD comprise about 3% of the general population

• We know that people with I/DD comprise about 9% of the prison population

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National Center on Criminal Justice & Disability
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
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.
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
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.
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
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
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
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 100 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
• Awarded grant for a pilot transitional services program in Atlantic County underway now.
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.
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 plan and condense into 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.
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.
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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Achieve with us.
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
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
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
C.M. Background

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

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

• Combination of poor placement, stopping medication, bad friends:

  – Crime Spree
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
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
Megan’s Law Impact

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

  – 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”
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
Questions?

Survey:

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