



*National Center on Criminal
Justice and Disability NCCJD™*



Violence, Abuse and Bullying Affecting People with Intellectual/Developmental Disabilities:

A Call to Action for the Criminal Justice Community



The Arc®

*National Center on Criminal
Justice & Disability NCCJD™*

The Arc's National Center on Criminal Justice & Disability™ is the national focal point for the collection and dissemination of resources and serves as a bridge between criminal justice and disability professionals. NCCJD™ pursues and promotes safety, fairness and justice for all people with intellectual and developmental disabilities as suspects, offenders, victims or witnesses.

About The Arc: The Arc is the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities and their families. The Arc encompasses all ages and more than 100 different diagnoses including autism, Down syndrome, Fragile X syndrome, and various other developmental disabilities. With over 650 chapters nationwide, The Arc is on the front lines to ensure that people with intellectual and developmental disabilities and their families have the support and services they need to be fully engaged in their communities. The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes. Visit www.thearc.org for more information.

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NCCJD's White Paper Series, *"Pathways to Justice™: Barriers and Solutions"*, highlights current issues, research, and promising practices from around the country regarding people with intellectual and developmental disabilities (I/DD) in the criminal justice system. Each paper includes contributions from experts across the country on the assigned topic. The central theme throughout the series is clear: **citizens with disabilities have a right to equal access of our nation's criminal justice system**, and both criminal justice and disability professionals must openly acknowledge the cracks in the criminal justice system and actively collaborate across professions to effectively bridge those gaps.

This paper is the result of a collaborative effort involving people with disabilities, practitioners, and leading experts in the fields of disability, criminal justice, and victim advocacy and draws on the experiences and expertise of the co-authors listed below. NCCJD deeply appreciates the valued contributions of these visionary advocates and experts:

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A Call to Action for Criminal Justice Professionals

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Introduction

Violence, abuse, and bullying¹ are frequent realities for people with intellectual and/or developmental disabilities (I/DD).² Criminal justice professionals, self-advocates (people with disabilities), family members, and disability professionals must collaborate and learn from one another to safeguard the lives of people with disabilities as they live independently in their communities.

What we Know—An Overview of the Research

Studies have shown that people with disabilities are more likely to be victims of crime than people without disabilities, and according to data from the National Crime Victim Survey, people with cognitive disabilities³ face the highest risk of victimization.⁴ One literature review conservatively estimates that people with disabilities are 4 to 10 times more likely to be victimized than people without.⁵

In 1998, the National Crime Victimization Survey (NCVS) began including statistics on crimes against people with disabilities.⁶ The act was designed “to increase public awareness of the plight of victims of crime with developmental disabilities, to collect data to measure the magnitude of the problem and to develop strategies to address the safety and

justice needs of victims of crime with developmental disabilities.” In accordance to this law, the Bureau of Justice Statistics (BJS) began a series of reports on crime against people with disabilities in 2008.

The latest BJS report published in February 2014 titled “*Crime against People with Disabilities, 2009–2012*” estimated **1.3 million violent crimes** occurred against people with disabilities in 2012, a rate nearly three times higher than for people without disabilities. In addition, 2012 marked rapes or sexual assaults of people with disabilities at nearly four times the rate of people without. The rate of violent victimization for youth (ages 12–15) was nearly three times higher for people with disabilities.⁷ More than half of violent crimes against people with disabilities were against people with more than one type of disability—and about one in five thought their disability was the reason they were targeted. **Individuals with cognitive disabilities had a rate of nonfatal violent crime victimization higher than the rates for people with all other kinds of disabilities** (about 30 per 1,000 persons aged 12 or older in 2010).⁸

Challenges Particular to People with Disabilities

People with disabilities face very specific challenges, often contributing to victimization, including:

- Increased risk, or perception of increased vulnerability
- Lack of resources or support systems
- Absolute dependence on an abusive partner or caregiver

Unadjusted rate of violent victimization against persons with disabilities, by disability type, 2009–2012

Disability type	Rate per 1,000 persons			
	2009	2010	2011	2012
Hearing	16.7	10.6	17.1	20.2
Vision	28.6	24.9	23.2	25.2
Ambulatory	20.5	19.7	22.6	30.5
Cognitive	46.0	43.5	50.5	63.3
Self-care	18.3	17.8	27.3	27.2
Independent living	24.4	26.4	25.3	28.6

Note: Based on noninstitutionalized U.S. residential population age 12 or older. Estimates were based on 2-year rolling averages. Includes persons with multiple disability types. Age-adjusted rates were not generated by disability type due to differences and limitations with the data for these groups. Rates are per 1,000 persons age 12 or older, except for independent living disability, which is per 1,000 persons age 15 or older. See *Methodology*. See appendix table 8 for standard errors.

Sources: Bureau of Justice Statistics, National Crime Victimization Survey, 2008–2012; and U.S. Census Bureau, American Community Survey, 2008–2012.

- Lack of independence in finances, housing, or transportation
- Physical or social isolation

Once victimized, barriers to the justice continue with:

- Lower rates of police follow-up, prosecution, and conviction of perpetrators
- Physical and cognitive barriers to the judicial system, including difficulties accessing courtrooms or other facilities if the crime is prosecuted
- Mistaken belief that people with disabilities are untrustworthy or not credible as witnesses
- Speech and/or cognition difficulties

When these factors are combined, they can easily lead to repeated victimization. Often, the disability itself may interfere with the ability of a crime victim to resist the perpetrator, or interfere with their ability to interact with law enforcement—the person may not even recognize that a crime has been committed and fail to report. Parents with disabilities may be afraid to lose custody of their children if they report violence or abuse.⁹ Considering these factors, the data likely drastically underreports the true incidence of crime against people with disabilities.

Despite clear statistical data that women with I/DD are significantly affected by sexual violence, prevention is lacking.¹⁰ Acts that would otherwise constitute crimes are considered non-criminal in the context of disability. Although people with disabilities are more likely to be re-victimized by the same person, it is estimated that more than 50% of victims never seek assistance from legal personnel or treatment service providers, leading to recurring

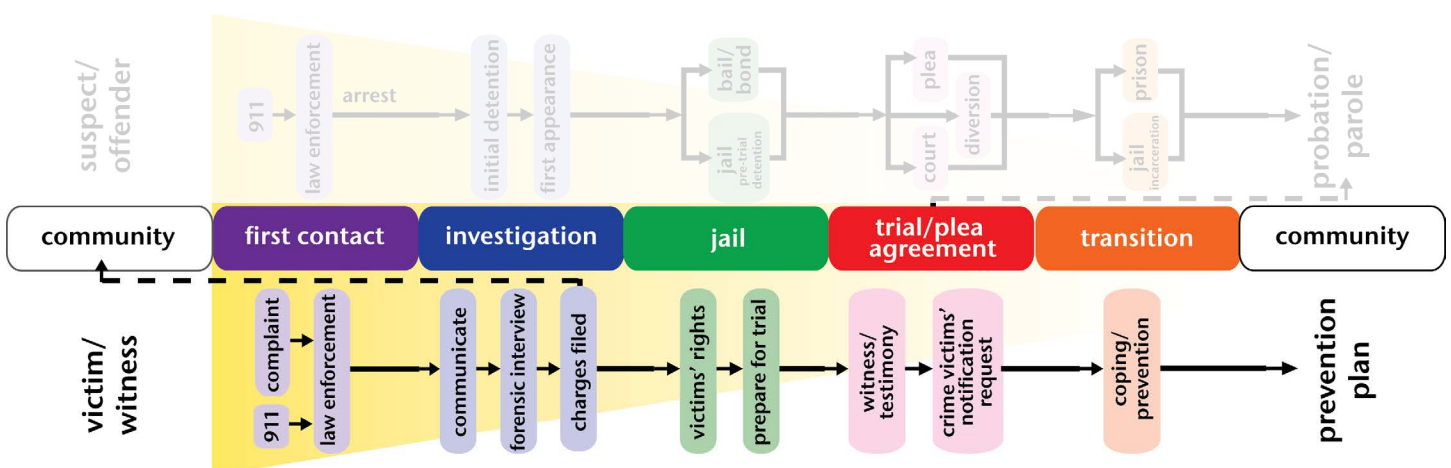


victimization (see graphic above that explains the cycle of victimization people with disabilities often experience).¹¹

The Pathways to Justice™ Model: A Framework for Discussions and Solutions

The National Center on Criminal Justice and Disability™ (NCCJD) created the **Pathways to Justice model** below to address the unique challenges people with I/DD face within the criminal justice system. Since its inception in September 2013, NCCJD has logged hundreds of inquiries related to criminal justice and disability topics, including calls about victimization. The **Pathways to Justice**

Pathways to Justice™ Model



information video,¹² highlights the case of James Meadours, a person with intellectual disabilities and a rape survivor, to explain exactly how and where in the criminal justice system victims require support to maneuver successfully through the system. The Pathways to Justice model highlights cracks in the system that kept James from accessing services he desperately needed. The purpose of this paper is to highlight barriers to justice crime victims with disabilities face and offer strategies criminal justice professionals can use to ensure equal access to justice.

Emerging Issues for Crime Victims with Disabilities

The statistics point to a high number of people being victimized, but a low number are requesting victim services: clearly, many victims with disabilities are not receiving—or do not have access to—crime victim services. To address the emerging issues that pose unique challenges to victims with disabilities, NCCJD asked people with disabilities and leading experts in the fields of criminal justice, victim services, and disability, to tackle an emerging issue, and provide possible solutions. To further clarify the issues, the authors were asked to consider factors such as the victim’s age, type of disability, type of communication style, type of victimization experienced, and how supporting victims with disabilities can be incorporated into pre-existing models of treatment. The paper begins with people with disabilities discussing why targeted education for criminal justice professionals is needed, reasons why victims with disabilities don’t report and tips on how to talk to victims with disabilities. Other issues covered include bullying, assisting victims with complex communication needs (CCN), trauma-informed care and victims with specific types of disabilities. In closing, a call to action is given to criminal justice professionals to proactively seek ways to better serve crime victims with disabilities, and ideas are suggested to help expand their reach into this traditionally underserved population.

- ¹ These terms are often used interchangeably because they define similar behaviors. For the purposes of this paper, the following definitions are used: 1) Violence: the unlawful exercise of physical force or intimidation by the exhibition of such force. 2) Abuse: treating (a person or an animal) with cruelty or violence, especially regularly or repeatedly. 3) Bullying: An unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The disability community cautions against overusing the term abuse when applied to people with disabilities, which may minimize the behavior or crime, and prefers using the terms violence, sexual assault, rape, murder, etc. in order to provide a specific description of the type of behavior or crime that took place.
- ² For definition of I/DD, see The Arc’s fact sheet: <http://www.thearc.org/what-we-do/resources/fact-sheets/introduction-to-intellectual-disabilities>.
- ³ BJS defines cognitive limitation as a serious difficulty in concentrating, remembering, or making decisions because of a physical, mental, or emotional condition.
- ⁴ See table 8, <http://www.bjs.gov/content/pub/pdf/capd0912st.pdf> “Unadjusted rate of violent victimization against persons with disabilities, by disability type, 2009–2012”
- ⁵ Sobsey, D., D. Wells, R. Lucardie, and S. Mansell. 1995. *Violence and Disability: An Annotated Bibliography*. Baltimore, MD: Brookes Publishing.
- ⁶ The Crime Victims with Disabilities Awareness Act (Public Law 105-301) was signed into law in 1998 and mandated that the National Crime Victimization Survey (NCVS) include statistics on crimes against people with disabilities, and the characteristics of the victims of those crimes.
- ⁷ In addition, in 2010, females experienced double the rate of violence compared to females without disabilities and males also experienced higher rates of violence (26/1,000 compared to 16/1,000).
- ⁸ U.S. Department of Justice, Bureau of Justice Statistics *Crime Against People with Disabilities, 2008-2010—Statistical Tables (Revised Nov. 2011)*. Available online: <http://www.bjs.gov/content/pub/pdf/capd10st.pdf>
- ⁹ Powers, L., Hughes, R., & Lund, E. (2009). *Interpersonal Violence and Women with Disabilities: A Research Update*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence.
- ¹⁰ Parish, S., et. al. (Aug 2009). *Sexual Assault Prevention for Women with Intellectual Disabilities: A Critical Review of the Evidence*. Intellectual and Developmental Disabilities, Vol 47 (4).
- ¹¹ Cycle of Victimization of People with Disabilities graphic taken from *Pathways to Justice™*: A Comprehensive Training Program for Law Enforcement, Victim Service Providers and Attorneys on Intellectual, Developmental and Other Disabilities (in development). The National Center on Criminal Justice and Disability. Washington, D.C.
- ¹² Available on YouTube. Search “Pathways to Justice: Start the Conversation”

The Important Role People with Disabilities Play in Reducing Victimization

by Molly Kennedy, Kecia Weller & Mark Starford, Board Resource Center
& Shirley Paceley, Director, Blue Tower Training

Note: This section was written by self-advocates and other disability advocates, addressing criminal justice professionals (law enforcement, victim service providers, and attorneys) and other self-advocates.

“People shouldn’t be able to hurt us and get away with it.”

“I may not talk as good as you. But I know what happened and I know who did it.”

“The man who raped me went away for 60 years. The detective and my lawyer believed me. 60 years is a long time. I am safe now.”¹

Education Equals Prevention

People with disabilities (sometimes referred to as self-advocates in the disability community) play an important role in educating criminal justice professionals that abuse can happen to anyone, at any time in their lives - but this is especially true for people with I/DD. Violence, abuse, and crimes against people with I/DD are often overlooked, excused, or denied when reported to authorities by people with disabilities. Many people experience abuse time after time in their lives. Most disturbing is that many victims know the abuser.

Educating criminal justice professionals about high rates of victimization among people with I/DD needs to be on-going. These professionals can help self-advocates learn to lead safer lives. If co-training with self-advocacy support groups, topics such as “what is abuse” and “ways to stay safe at home, at work and in the community” are important topics. Victim service providers with specific training can

help prevent abuse by explaining to victims with disabilities that they can create their own personal safety plan. These plans can include:

1. Who to talk to if you suspect someone wants to hurt or force you to do something
2. The name of a trusted person that will check in with you on a regular basis
3. Contact information for the local police and adult protective services
4. Your own personal rules about ways you can stay safe

The bottom line is that education equals prevention!

Criminal justice professionals need to be able to talk openly about safety in ways that do not scare, overwhelm, or intimidate the person with a disability. For example, an attorney can offer to slow down their communication and ask additional questions to confirm the victim understands what abuse means if the person seems confused. Criminal justice professionals need to know the types of violence that people with disabilities experience throughout their lives, such as physical and sexual violence, threats and intimidation, neglect, and financial exploitation. Knowing the signs and acknowledging when abuse is happening are the first steps to ending the epidemic.

Also, as self-advocates, we need to educate authorities about how to talk with us, have patience, and believe us when we are brave and come forward to report. Research has shown that when people with I/DD live in segregated settings and attend

¹ Direct quotes made by persons with I/DD.

segregated programs they have a greater chance of being victimized and remain fearful about reporting.

Criminal justice professionals must be aware of the warning signs of violence, talk with the victim and encourage them to speak up to a safe, trusted person in their life. The voices and words of people with I/DD who have been victimized can teach us a tremendous amount about overcoming obstacles to justice. It is important that we are able to hear and listen to crime reports from the people who have been victimized and also understand why it may be so difficult for them to tell.

Reasons for Not Reporting Victimization

People with I/DD may not be able to tell someone when they are hurt by another person or persons. The reasons for not reporting include:

- Not being educated about their rights
- Fear of more abuse
- Fear of not being believed
- Fear of being blamed or punished
- Fear of losing services
- Fear of losing their home, job, family, or friends
- Fear of telling on someone who has power over them
- Being taught to go along with what others do to them

When the abuse/crime becomes known, it is important that criminal justice professionals understand these fears in the investigative and/or advocacy process.

How to Talk to Victims with Disabilities

In order for the victim to tell what happened, the environment needs to feel safe. Here are some helpful strategies for investigative interviews:

1. Meet with the person in a comfortable location with limited distractions. When possible, ask the person what is the best place to meet.
2. Meet with the person without the presence of others who may influence their ability to speak freely.
3. Allow plenty of time for the interview.
4. Use plain language that is easy to understand.

5. Ask the person to share what they are able to about the situation. Let the person tell their account of what happened without interruption. Listen actively.
6. Focus on what the person saw, heard, felt, smelled, and tasted. This will provide a complete understanding of the person's experience.
7. Ask open-ended questions such as, "Can you tell me more about...?"
8. Do not ask 'why' questions or the person may think you are blaming them for what happened.
9. Avoid rapid-firing of questions.
10. Before leaving, thank the person for meeting with you and give them your name and contact information. Explain what happens next.

There may be a situation in which an investigator or advocate is told, "She is non-verbal" or, "She can't talk." Keep in mind that everyone communicates. In this kind of situation, criminal justice professionals can ask questions such as, "How does she let you know what she needs?" or "What kind of support does she need to communicate?" Explore all options so that you know how best to communicate with the person, ensuring access to the criminal justice process. When a victim with I/DD has the opportunity to tell what happened to them in a safe environment with a trusted person, the truth can be discovered. Only then can the victim move forward with informed choices about court, advocacy services and healing.

Most importantly, the best way to stop this silent epidemic is for those of us in the disability community to keep talking to those in the criminal justice community about the issues facing crime victims with disabilities. Self-advocates can and must take the lead. Disability and criminal justice professionals can support self-advocates to speak out against violence at self-advocacy meetings, disability councils, police departments, justice-related conferences, and schools and help make new laws that can protect people with disabilities from further abuse and violence. Working together with criminal justice professionals, people with disabilities can break the cycle by learning, sharing and reporting.

Supporting Child Sexual Abuse Victims with Disabilities

By Sharon G. Elstein, Research Director, ABA Center on Children and the Law¹

Children with disabilities are particularly vulnerable and underserved in the criminal justice system. Criminal justice professional's unawareness of the existence of diverse disabilities among child sexual abuse victims bars recognition and accommodation of unique needs. The lack of education, training, and skills for prosecutors and criminal justice professionals signifies a missing link in access to justice for child sexual abuse victims with disabilities.

The Problem: Children with Disabilities at Far Greater Risk

Research demonstrates that children with any type of disability are 3.7 times more likely to experience violence than children without disabilities, and 2.9 times more likely to be victims of sexual abuse.² A review of administrative records of children in public schools and early childhood programs in Nebraska found that 31% of children in special education programs were victims of abuse, compared with 9% of their nondisabled peers.³ From 1999 to 2007, 33% of children in the child welfare system were reported as having a disability, special need, or learning challenge.⁴ “For all types of violence, children with disabilities are at a significantly greater risk.”⁵

Dependence on caregivers for activities of daily living (e.g., bathing, dressing, feeding), leave children particularly vulnerable to abuse. Social disabilities, like autism, may result in misidentifying predatory overtures as “friendly”. Children may not have received sex education (e.g., “good touch/bad touch”) due to parental fears or assumptions. Those with communication challenges (“Complex Communication Needs”) may be perceived by

abusers as unlikely to report or be believed. “Stigma, discrimination, and ignorance” place people with disabilities at higher risk than those without disabilities.

The Problem: Lack of Professional Knowledge Bars Access

The National Children’s Alliance recognizes the “Cascade of Injustices” faced by child victims of abuse with disabilities:

1. Disclosure of abuse hampered by victim not recognizing the abuse as such, or being compliant as a tendency of disability; communication issues or being afraid to disclose; or being misunderstood or not believed
2. Investigation not initiated because first responders believe child will not be a competent witness, the alleged perpetrator provides a “reasonable” explanation, or disability masks abuse
3. Perpetrator not brought to justice because prosecutor chooses not to file charges, thinking the child will not present as a competent witness or fearing a trial will not be successful

1. Victim Does Not Disclose



2. Ableism Hampers Investigation



3. Prosecutor Does Not File Charges



4. Judges Question Competency

4. Trial will not result in conviction because judges have issues with communication problems and competency concerns.⁶

The Solution: Improving Identification of Disabilities

To identify disabilities in child victims, first responders and other criminal justice practitioners must conduct investigations grounded in communicating with and accommodating unique needs. Recognizing the statistically high probability that a child abuse victim has a disability and using a protocol to discern which disability can increase arrests and prosecutions and thus prevent child victims from falling through the cracks.

First Responders. Law enforcement officers need training on identifying child victims with disabilities, types of disabilities, communications within the context of different disabilities, and accommodations in the forensic interviewing and court processes. Nationwide education efforts targeting law enforcement officers are cropping up, in part responding to high-profile incidents of police officers' tragic interactions with young adults with disabilities.

First Responder Trainings include:

- NCCJD's *Pathways to Justice™: A Comprehensive Training Program for Law Enforcement, Victim Service Providers and Attorneys on Intellectual, Developmental and Other Disabilities*,⁷ which includes information specific to child victims with disabilities
- *Child Abuse Victims with Disabilities: A Curriculum for Law Enforcement First Responders and Child Protective Services Frontline Workers* from the California Governor's Office of Emergency Services
- Niagara University's current grant from the **New York State Developmental Disabilities Planning Council** to develop a curriculum for the training of police officers, fire fighters, emergency medical services, and other first responders in New York⁸
- *Victims with Disabilities: The Forensic Interview, Trainer's Guide* from the Office for Victims of Crime, helping "law enforcement personnel acquire additional skills but also to help them acquire a deeper understanding of the lives, personal attributes, and abilities of individuals with developmental and other disabilities"⁹

- *A Curriculum for Law Enforcement Officers (with Trainer's Guide)* from Temple University, providing law enforcement officers with a basic understanding of I/DD and the impact it has on an individual's ability to interact with criminal justice personnel.¹⁰

Prosecutors and Judges. First responders are a small piece of a larger cadre of decision-makers central to justice system access for child abuse victims with disabilities. Late stage criminal justice professionals like prosecutors, judges, investigators, and Child Advocacy Center professionals have limited exposure to disabilities or awareness of appropriate communication strategies and accommodations. Instead, they rely on reports from law enforcement officers and child protection workers, who are the "first responders" to disclosures of abuse. However, "[c]riminal investigators often lack the skills and knowledge to effectively interview children with communication disabilities."¹¹

In addition, children with disabilities may be discounted as credible witnesses or unable to provide information without accommodations. Among many factors, prosecutors' decisions to charge rely most heavily on their estimations of victim credibility and strength of evidence.¹² Credibility rests on the clarity of children's disclosures in forensic interviews, and thus their potential for strong testimony in court—factors highly dependent upon skilled interviewers and accommodation of disabilities. Prosecutors "make the decisions that control the system, and they exercise almost boundless discretion in making those decisions."¹³ While "there is no doubt that police officers exercise broad discretion," their power stops at the "courthouse door." Prosecutorial unease with child victims' competency to testify in grand jury, in depositions, and on the stand, paired with the view that juries will not convict, stifles willingness to prosecute.¹⁴ The perceived added burden of disability magnifies reluctance to accept such cases. These issues combine to limit investigation and prosecution of cases with victims with disabilities. Thus, "children with disabilities who have experienced sexual abuse are less likely to receive the services and supports they need to heal and seek justice."¹⁵

Prosecutors and judges are conspicuously absent from specific training and skills development, despite

wielding considerable discretion accepting cases and permitting accommodations in testimony. The dearth of training materials counters the call for judges to “get serious with penalties levied upon abusers so that repeat offenders won’t be able to” abuse children with disabilities.¹⁶ Cases must be presented for prosecution and trial for judges to “get serious.” Without specific training curricula and tools for prosecutors, investigators, and judges to gain competence in preparing and accommodating child sexual abuse victims with disabilities, these children will continue to fall through the cracks.

Promising Practice: The Bennington Approach

The ABA Center on Children and the Law worked with the U.S. Department of Justice, Bureau of Justice Assistance (BJA) on its *Closed Circuit Television (CCTV) and Recording Technology* grant program. The BJA program’s purpose was to reduce the further traumatization of child sexual assault victims by providing equipment for recording child victim forensic interviews and CCTV for remote testimony. Center staff evaluated court and prosecutor-based programs for 18 years.

One of the 45 programs under Center responsibility was the Bennington, Vermont, State’s Attorney’s Office, Special Investigation Unit (SIU). Chief Deputy State’s Attorney Christina Rainville and her investigator focused their attention on identifying disabilities among their young clients, after receiving training on protecting children with disabilities against sexual assault. They learned that children with disabilities were 75% more likely to be sexually assaulted, and that the children whose disabilities limited their ability to speak (and thus limited their ability to report) were most at risk. Yet, no one was prosecuting these cases because of the presumption that it was too difficult to try a case with a child who cannot speak. SIU reassessed whether they were effectively protecting children with disabilities in their community. More often than not, when police interviewed a child in a suspected case of sexual assault, the child never disclosed anything.

Investigate all child victims for disabilities. SIU’s resulting initiative focused interviewers on the potential that a child had a disability, learn about that disability, and then adjust the interview accordingly.

They developed a disabilities-based practice where the investigators:

- (a) **before** the interview, ask the person who made the initial report (often a teacher or relative) if the child has any disabilities
- (b) obtain the child’s school evaluations of the disability and any school plans that addressed those disabilities (IEPs and 504 plans);
- (c) discuss the disabilities with a parent or teacher to gain an understanding of how the disabilities could potentially affect the interview; and
- (d) modify the approach to the interview accordingly (e.g., simplifying language for children with verbal comprehension disabilities, providing writing materials for children who have difficulty speaking, taking frequent breaks).

They learned that **over one-half** of the children who are sexually assaulted in Bennington County had disabilities. Many of the children had disabilities that directly affected their ability to report, including:

- Autism Spectrum Disorders (ASD)
- Deafness
- Cognitive impairments with IQs below 70
- Verbal communication disorders
- Anxiety disorders, post-traumatic stress disorder (PTSD), and emotional disturbances (often resulting from sexual assault, dating back to initial occurrence of the assaults)
- Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD) (many victims tend to be diagnosed with ADD shortly after the first sexual assault).

One of the diagnostic criteria for PTSD is the onset of an inability to focus. Children who did not disclose the abuse developed PTSD, but were diagnosed with ADD because no one knew what had brought on the sudden inability to focus.

Accommodations during Forensic Interviews.

Investigators learn about the communication styles and needs of the victims prior to the interview, and determine whether the child can read and write. Many children with disabilities cannot speak but can write their answers. The interviewers bring pen and paper, find out from the parent what time of day is best to conduct the interview, and secure any

necessary augmented communication devices.¹⁷

Accommodations in the Courtroom: CCTV, ADA. Courtroom accommodations increase the likelihood of a child victims' access to justice. For instance, trauma-based PTSD made one child victim ("Victim A") terrified of testifying in court with the defendant present. Her therapists feared she would spiral out of control and never recover. Vermont, like many states, has a rule permitting children in sexual abuse cases to testify outside the courtroom: there was not a single courtroom in the state with the equipment to do it. After Bennington's State's Attorneys' office secured the BJA-funded CCTV equipment, Victim A's family agreed she could testify remotely over CCTV. The defendant pled guilty before she needed to testify. In addition, Chief Deputy State's Attorney Rainville has broken new ground in Vermont with case law allowing the use of accommodations under the Americans with Disabilities Act (ADA).

The Bennington Approach has increased prosecution and conviction rates for cases of child sexual abuse victims with disabilities in that jurisdiction. In the past, these cases were never routinely prosecuted. In addition, media coverage of these cases raised awareness in the community, and helped encourage reporting of abuse. The ABA Center commissioned Rainville to produce 12 articles on the various aspects of working with child victims with disabilities in criminal justice settings for its journal, *Child Law Practice*. The articles are being compiled into a book and will be published by the ABA Center in 2015. The ABA Center believes this approach is the missing link between first responder training and access to justice.

Without training, skills and support for prosecutors, investigators, and judges, child abuse victims with disabilities will be barred from equal access to justice. The Bennington Approach bridges a gap in the system, providing criminal justice system practitioners access to information needed to support children with disabilities. Identifying disabilities, addressing communication challenges, making accommodations during forensic interviews and in court increases the likelihood these underserved child victims will equally engage in the criminal justice process.

- ¹ Created in 1978, The ABA Center on Children and the Law improves children's lives through advances in law, justice, knowledge, practice and public policy. See: http://www.americanbar.org/groups/child_law/child_law.html
- ² World Health Organization (WHO), Disabilities and rehabilitation: Violence against adults and children with disabilities. <http://www.who.int/disabilities/violence/en.index.html>, retrieved 7/16/2012.
- ³ Sullivan, P & Knutson, J. Maltreatment and Disabilities: A population based epidemiological study. *Child Abuse & Neglect* 24/10, 1257-1273, 2000.
- ⁴ Administration for Children and Families (ACF), National Survey of Child and Adolescent Well-Being; Research Brief No.7: Special Health Care Needs among Children in Child Welfare. Washington, DC, 2007.
- ⁵ Jones, L., Bellis, M. et al., Prevalence and risk of violence against children with disabilities: A systemic review and meta-analysis of observational studies. Published on-line: www.thelancet.com, July 12, 2012.
- ⁶ National Center for Victims of Crime, Responding to Crime Victims with Disabilities, Resource Directory for Service Providers: Law Enforcement, <http://www.victimsofcrime.org/library/resource-directory-victims-with-disabilities/law-enforcement>, retrieved April 2, 2014 (graphic adapted by NCCJD).
- ⁷ In production, see: www.thearc.org/nccjd
- ⁸ See: www.ddpc.ny.gov
- ⁹ See: <http://www.ovc.gov/publications/infores/pdf/txt/VictimsGuideBook.pdf>
- ¹⁰ See: <http://disabilities.temple.edu/publications/>
- ¹¹ Vera Institute of Justice, Smith, N., and Harrell, S., "Sexual Abuse of Children with Disabilities: A National Snapshot", Issue Brief, Center on Victimization and Safety, March 2013
- ¹² Frederick, B., and Stemen, D., The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making – Technical Report, Vera Institute of Justice, December, 2012
- ¹³ Davis, A., "In Search of Racial Justice: The Role of the Prosecutor," *Legislation and Public Policy*, Vol. 16:821, 2013
- ¹⁴ Smith, B. and Goretsky-Elstein, S., The Prosecution of Child Sexual and Physical Abuse Cases, ABA, September 1993.
- ¹⁵ Vera Institute of Justice, Smith, N., and Harrell, S., "Sexual Abuse of Children with Disabilities: A National Snapshot", Issue Brief, Center on Victimization and Safety, March 2013
- ¹⁶ Baladerian, N., Coleman T., and Steam, J., Abuse of People with Disabilities, Victims and their Families Speak out, A Report on the 2012 National Survey on Abuse of People with Disabilities, Spectrum Institute, Los Angeles, CA, 2013
- ¹⁷ Questions include the following: Is the child exhausted after a day of school, so the morning is better? Or is this a child who is working very hard at school and will try to end the interview as soon as possible to get back to school? For children on the Autism Spectrum who have verbal communication disabilities, such as selective mutism, they may use a letter-board or a computer.

Assisting Victims with Autism Spectrum Disorder (ASD)

By Carolyn Gammicchia, L.E.A.N. on Us

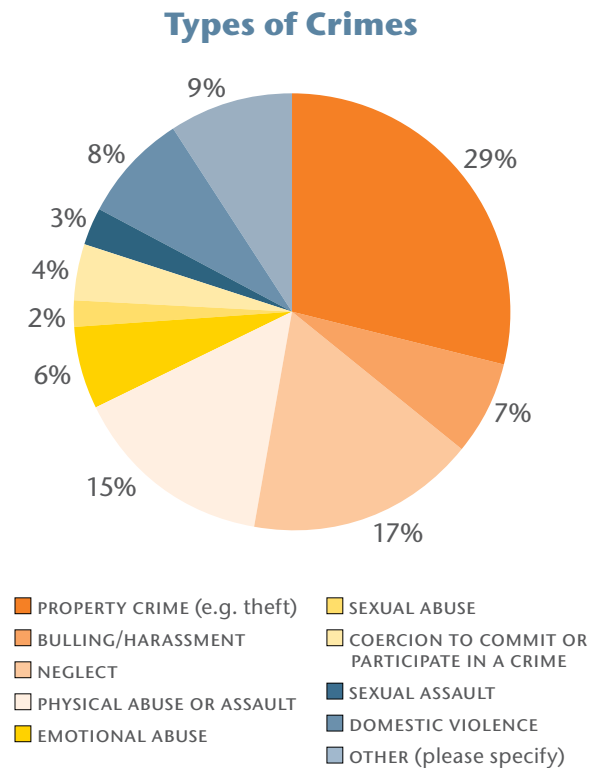
What is Autism Spectrum Disorder?

Autism spectrum disorder (ASD), a neurological condition with a variety of symptoms, affects individuals to varying degrees: ASD knows no racial, ethnic, or social boundaries. People with autism may have difficulties in communication and social understanding, unusual reactions to sensory input, and/or may demonstrate what appear to be inappropriate behaviors to others. ASDs affect an estimated 1 in 68 children in the United States, an increase of close to 200% since 2004.¹

Prevalence of Crimes

In 2006, the Department of Justice's Office for Victims of Crime funded the Crime Victims with Autism Assistance, Education, and Training Program to address the needs of victims of crime living with autism in collaboration with the Howard County Chapter of Autism Society and L.E.A.N. On Us.² The initiative created six facts sheets for crime victim professionals, and two educational brochures for victims with autism and their care providers on how to seek assistance if needed. These materials are the first of a series of publications designed to improve services to crime victims with autism. A survey of over 1,500 individuals targeting people with autism, their family members, and crime victim professionals reported that 35% of individuals with autism had been the victim of a crime. Of these victims, 38% reported experiencing physical abuse or assault, 32% reported emotional abuse, and 13% reported sexual abuse.³

The types of crimes experienced are indicated in the figure below.



Overcoming Challenges

For those unfamiliar with autism, challenges in providing support can be overcome with training. Characteristics typical to people with autism must be recognized and accommodated (see sidebar). Communication considerations are vital to the process, especially for providing appropriate supports and accommodations from initial contact to follow-up care. The first step? Ask

the individual directly about his or her means of communication, or ask a support person if you aren't able to communicate with the victim immediately. Characteristics of victims with autism include:

- Verbal responses (if able) may seem loud, blunt, or tactless
- May not comprehend what is said due to processing abilities or unfamiliarity with the person speaking
- May appear deaf and not respond to verbal cues
- May be unable to speak verbally (30-50% estimated no-verbal), or speak with difficulty, use rambling speech, or echo what is said
- May repeat words or phrases several times to process them
- May become frustrated when the form of communication they use is not understood

Providing Services & Using Resources

For victims of crime with autism, needs identification—especially ensuring a screening for Post Traumatic Stress Disorder (PTSD) by a professional that has worked with individuals with the disorder—is important. Due to individualized needs, obtaining background history is essential to providing a feeling of security and well-being. Work towards achieving a similar routine for the person if possible, and identify a person whom the individual has developed a safe, personal relationship with to assist if needed. Be prepared for therapy/counseling session to take longer due to difficulties some individuals with autism have in establishing and developing meaningful relationships. Counseling services should not be denied if needed and appropriate professionals should be sought if none are available locally. Most local child advocacy centers have referrals for qualified professionals and for additional supports if needed.⁴

The OVC/ASA Crime Victims with Autism Assistance, Education, and Training Program developed six professional fact sheets and brochures as a resource for those within the following professions who may be involved as crime victim professionals:

- Law Enforcement
- Paramedics and Emergency Room Staff
- Advocates, Attorneys, and Judges

Characteristics of Autism

People with autism may exhibit any of the following behaviors in an encounter with those providing support—do not misinterpret actions as deliberate, disrespectful, or hostile.

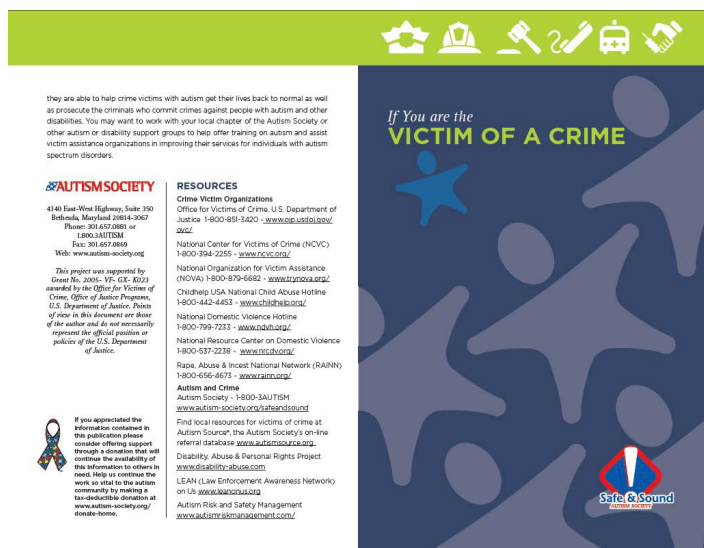
Persons on the autism spectrum may:

- Not understand their rights
- Not understand what is expected of them
- Not respond to verbal instruction
- Run or move away when approached
- Be unable to communicate with words
- Only repeat what is said to them
- Communicate with sign language, pictures or gestures, or use assistive technology to communicate
- Avoid eye contact
- Appear argumentative or stubborn
- Say only “No!” or “Yes!” in response questions
- Have difficulty judging personal space
- Be overly sensitive to sensory input (e.g., flashing lights, sirens, crowds)
- Have a decreased cognitive ability when experiencing heightened anxiety or frustration
- Become anxious or agitated, producing fight or flight responses, or behaviors such as screaming, hand flapping, or self-injury
- Appear to be under the influence of narcotics or intoxicants
- Have an associated medical condition such as a seizure disorder
- Be fixated on a particular object or topic and may ask repeated questions
- Speak in a monotone voice with unusual pronunciations
- Reverse pronouns (“Can I stop?” instead of “Can you stop?”)
- Give misleading statements
- Have problems speaking at the correct volume
- May, if verbal, be honest to the point of bluntness or rudeness
- Not be able communicate the extent of trauma due to a lack of understanding of healthy sexuality or appropriate boundaries in care provider or other relationships
- Have the need for a Forensic Interviewer with knowledge of autism
- Not understand the criminal justice system and the expectations to assist in prosecution

Source: OVC/ASA Crime Victims with Autism Assistance, Education, and Training Program

- Child Abuse Counselors
- Domestic Violence and Sexual Assault Counselors
- Social Workers and Counselors

The brochures pictured below assist victims of crime with autism and the second is for family members and/or care providers to be able to provide support to individuals with autism. Both contain suggestions for assistance and variety of resource and information agency contacts. These are available to download free via the Autism Society website at <http://www.2d-hosting.com/autism-society/about-the-autism-society/publications/resource-materials/>



There are many additional resources that can assist professionals assisting victims of crime with autism. See [The Arc's National Center on Criminal Justice & Disability™](#) state-by-state map of resources and fact sheet on the topic to learn more.⁵

¹ Centers for Disease Control and Prevention (2015). Retrieved from www.cdc.gov/ncbddd/autism/data.html

² Since 2002, L.E.A.N. On Us has worked to assist first responders to collaborate with the disability community to meet the needs of individuals with disabilities. See: <https://www.facebook.com/pages/LEAN-On-Us/314400839740>

³ Autism Society (2006). *Results of the victims of crime with autism survey* (unpublished).

⁴ Gammicchia, C., Johnson, C., (2007). *OVC/ASA: Crime Victims with Autism Assistance, Education, and Training Program, Presentation at Autism Society National Conference.*

⁵ For more information about people with ASD in the criminal justice system see NCCJD's fact sheet: <http://www.thearc.org/NCCJD/materials>

Assisting Victims with Fetal Alcohol Spectrum Disorders (FASDs)

*by Kathleen T. Mitchell, MHS, Vice President and Spokesperson,
National Organization on Fetal Alcohol Syndrome*

Fetal Alcohol Spectrum Disorders (FASDs) are the nation's leading cause of I/DD and birth defects. FASD occurs when a mother drinks during pregnancy. The FASD umbrella includes several different diagnoses, and individuals can experience symptoms that range from mild to severe. Symptoms of FASD can include growth deficiency, specific facial features, neurological and cognitive issues and physical malformations. The FASD umbrella includes several diagnoses, with diagnostic criteria including prenatal and postnatal growth retardation, cranial anomalies, central nervous system dysfunction, and major organ system malformation. FASD is a lifelong **invisible** disability, and is often accompanied by normal IQ but deficits in attention, memory, executive functioning, and modulating behavior. Planning and organization are difficult and people with FASD are often very easily led and manipulated. Understanding consequences is a real challenge for people with FASD.¹

In 1996, Streissguth et. al. examined 415 clients with an FASD from ages 3 to 51. Her research concluded:

- 94% had mental health problems
- 60% (age 12 and over) had disrupted school experience
- 60% (age 12 and over) had trouble with the law
- 50% (age 12 and over) had been confined (incarceration or inpatient drug or mental health)
- 50% (age 12 and over) had displayed inappropriate sexual behavior
- 35% (age 12 and over) had drug or alcohol addictions

- 83% (age 21 and over) could not live independently
- 79% (age 21 and over) had employment problems

Having a diagnosis (before the age of 12) was a defensive factor in avoiding secondary disabilities.²

Understanding the typical profile of FASD, it becomes apparent why many people with FASD are victimized by individual perpetrators, as well as by systems of care. Schools and service providers are not well informed about FASD. They lack the skills and resources to educate and treat people with an FASD. Recognizing that a person has a developmental disability is the first step in preventing victimization and improving outcomes. Many aspects of our service delivery system place persons with disabilities at risk.³ For example, one study found that 44% of all offenders made initial contact with their victims through the web of special services provided to people with disabilities.⁴ It is reported that 70% of women with developmental disabilities are sexually assaulted during their lifetime—a 50% higher rate than the rest of the population.⁵

One of the systems especially problematic for those with disabilities is the transit system. Transit systems are not regulated in their hiring practices. Laws and rules for hire vary in each state, county, and system delivery. A long-time volunteer at NOFAS, Karli S., can tell you firsthand about the importance of one on one support. Karli lives with an FASD and Intellectual Disability. Her passion is to help others who also have FASD, and in 1999 she was awarded a Daily Point of Light award for her contributions to FASD prevention.

Several years ago, at age 35, Karli was molested by her van driver while using a transit service that receives government funding to transport people with disabilities. She reported the incident to her

“Both the criminal justice and disability communities must continue to work together to ensure that all victims have access to testify against their perpetrators, and can look to models of success to begin taking steps in the right direction.”

parents and the police and, although the driver failed two polygraph tests, authorities decided not to prosecute him. Authorities believed Karli’s story, but the prosecutor felt “Karli did not make a credible witness.” A few years later, she was attacked a second time while in transit with a

different company that was also contracted by the government to support people with disabilities. A cab driver took a detour during the one-mile trip to her job site and took her to a secluded park where he violently raped her. This time prosecutors had DNA evidence. The cab driver received a 20-year prison sentence, with additional time for harming a vulnerable person. It was also discovered that he had a prior record and was a known predator. After that incident, it was well understood that it was not safe for Karli to take transportation provided to people with disabilities. This meant that she could no longer work without the support of her family. As a result, she experienced Post Traumatic Stress Disorder (PTSD) and stopped attending all of her social club events. It took Karli five years to recover emotionally and become socially active again. Currently, she relies on family and disability support workers, hired and screened by her family, for all of her transportation needs.⁶

The National Organization on Fetal Alcohol Spectrum Disorder (NOFAS)⁷ believes that the government, states, and service providers must work together to put a stop to violence against people with disabilities, like Karli. There are solutions that can work and are working now in other countries. One

example is how the United Kingdom (UK) addresses transit safety. They have a program called *LadyCabs* that matches riders with disabilities and female customers with female drivers. If for some reason a female cabby is unavailable, they require two male drivers in the vehicle. In addition, many London cab companies have closed circuit television cameras in each car. Unlike video images, still digital images are tamper-proof, so are admissible as evidence in a Court of Law. Further, the UK requires an enhanced disclosure from their Criminal Records Bureau that is required for any individual that comes in to contact with children or vulnerable adults. They review any convictions, warnings, and/or reprimands of service providers.⁸ Both the criminal justice and disability communities must continue to work together to ensure that all victims have access to testify against their perpetrators, and can look to models of success to begin taking steps in the right direction. People just like Karli are suffering in silence, and criminal justice professionals who are well-educated about these issues and proactive in their approach to working with crime victims with disabilities may be the only hope they have in obtaining justice.

¹ For more information about people with FASD in the criminal justice system see NCCJD’s fact sheet: <http://www.thearc.org/NCCJD/materials>.

² Streissguth, A.P., Barr, H.M., Kogan, J.K., Bookstein, F.L. (1996). *Understanding the occurrence of secondary disabilities in clients with Fetal Alcohol Syndrome and Fetal Alcohol Effects*. University of Washington School of Medicine.

³ Thiel, Smith, K., Baladerian, N., Boyce, K., Cantos, O., Davis, L.A., Kelly, K., Mitchell, K., & Stream, J. (2011) Fetal Alcohol Spectrum Disorders and Victimization: Implications for families, Educators, Social services, Law Enforcement, and the Justice System. *Journal of Psychiatry & Law, Special Issue: Fetal Alcohol Spectrum Disorders* (Part II), Spring 2011, Volume 39, No.1, 121-158.

⁴ Sobsey, D. 1994. *Violence and Abuse in the Lives of People with Disabilities*. Baltimore, Md. Paul H. Brookes Publishing Co.

⁵ Baladerian, N.J. (1993, rev. 1999). *Abuse of children and adults with disabilities: A risk reduction and intervention guidebook for parents and other advocates*. Culver City, CA.

⁶ Mitchell, K., (2014). National Organization on Fetal Alcohol Syndrome (NOFAS). *FASD: Curriculum for Addiction Professionals (CAP)*, Level 2, 2006. <http://www.nofas.org/nofas-curriculum-for-addictions-professionals-cap>

⁷ NOFAS is a national organization whose goal is to prevent alcohol use during pregnancy and supports individuals, families, and communities living with Fetal Alcohol Spectrum Disorders (FASDs). See: <http://www.nofas.org/>

⁸ National Organization on Fetal Alcohol Syndrome. (2005). *Screening Persons for Work with Disabled*.pdf. Retrieved from NOFAS Website: <http://www.nofas.org/policy-legislation/>

Bullying and Students with I/DD

By Julie Hertzog, Director of PACER's National Bullying Prevention Center

Research has consistently found that children with disabilities are two to three times more likely to be bullied than their peers without disabilities. One study shows that 60% of students with disabilities report being bullied regularly compared with only 25% of all students.¹ Bullying has serious consequences that should never be minimized. Consider the struggles faced by this student with disabilities who has been bullied and how deeply it affected his life:

"People have called me stupid before. They likely don't realize what I am going through. I am in special ed, (ADHD and aspergers [SP], however you spell it) and I don't fit in with them because they don't accept me. They are occasionally bullied, I have seen it. Bullying is not common in our school unless you are in special ed. This is just wrong on so many levels. The bullies don't punch or kick us physically, but they break our heart by laughing at us. The others may not completely understand, and I don't either. However, I stand up for my fellow special ed students. If I tell an adult, the adult does nothing. They often say "Stay away from them" even if someone threw a sports drink cap at me. "Stay away from them" they said, and that was the end of the conversation. The irony is not just that I can't stay away from the students who throw stuff at me, it is the fact that most places say "Report bullying to a teacher" when the teachers can't do much if they don't see it unless the bully left a physical mark. Often THE ONLY MARK THEY LEAVE IS A SCAR ON YOUR HEART, which is impossible to see."

—James, 15 years old

Peer-to-peer bullying was once considered a simple, harmless rite of childhood, experienced by many students labeled as different. Students who told adults about the behavior were given ineffective advice such as "just ignore it," "bullying will make you tougher," or "stay away from the person bullying." Other responses included students being asked "what they did to deserve it." These reactions set the stage for blame-the-victim mentality instead of looking at bullying as a serious societal issue impacting access to education, mental and physical health, and safety for self and others. "Factors such as physical vulnerability, social skills challenges, or intolerant environments may increase the risk of bullying. Students who are targets of bullying are more likely to experience lower academic achievement, higher truancy rates, feelings of alienation, poor peer relationships, loneliness, and depression. We must do everything we can to ensure that our schools are safe and positive learning environments—where all students can learn."²

Even though students with I/DD are disproportionately affected, criminal justice professionals, especially School Resource Officers (or SROs)³, must realize how often bullying of these students is often overlooked or minimized. As students already facing challenges accessing rights and services, bullying is worse for I/DD students: identifying the factors that differentiate the peer-to-peer bullying of students with I/DD from the bullying experience of their peers without disabilities highlights the disproportionate negative impact.

Definition—Bullying versus Disability Harassment

When does bullying reach the threshold of disability harassment and meet the criteria for federal protection? According to the Office for Civil Rights (OCR) and the U.S. Department of Justice (DOJ), bullying may also be considered harassment when the conduct is sufficiently serious that it interferes with (or limits) a student's ability to participate in (or benefit from) the services, activities, or opportunities offered by a school and is based on a student's disability. Harassing behaviors may include:

- Unwelcome conduct, such as verbal abuse, name-calling, epithets, or slurs
- Graphic or written statements
- Threats
- Physical assault
- Other conduct that may be physically threatening, harmful, or humiliating

Students experiencing this behavior have protections at the federal level.

Promising Practices

In recent years, there has been activity at the federal, state, and local levels to build awareness and increase education on the topic of bullying prevention. These efforts have included emphasis on students with disabilities.

1. Summits—U.S. Department of Education and White House

- In August 2010, the U.S. Department of Education hosted the first-ever [National Bullying Summit](#) and launched [StopBullying.gov](#), a federal government website managed by the U.S. Department of Health & Human Services. The site includes a section on [bullying of students with disabilities](#).
- March 10, 2011 – First-ever [White House Conference on Bullying Prevention](#) in which representatives from PACER's National Bullying Prevention Center spoke about disability harassment and bullying.

2. Dear Colleague Letters

- In 2010, another [Dear Colleague](#) letter from OCR was issued that reminded school districts of their responsibilities under civil rights laws

that prohibit discrimination and harassment on the basis of race, color, national origin, sex, disability, and religion.

- On August 20, 2013, the Office of Special Education and Rehabilitative Services (OSERS) issued [guidance to educators and stakeholders on the matter of bullying of students with disabilities](#). This guidance provides an overview of school districts' responsibilities to ensure that students with disabilities who are subject to bullying continue to receive a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).⁴
- Students with intellectual and developmental disabilities have legal rights when they are the target of bullying or disability harassment. According to a [2000 Dear Colleague](#) letter from the Office for Civil Rights, "States and school districts also have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA), which is enforced by OSERS [the Office for Special Education and Rehabilitative Services], to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes."

3. Legislation

Currently almost all states have legislation designed to address bullying and keep students safe, including:

- Enumeration of Specific Characteristics –Explains that bullying may include, but is not limited to, acts based on actual or perceived characteristics of students who have historically been targets of bullying, and provides examples of such characteristics – including I/DD.⁵

4. Increasing Professional Capacity

Federal Level

- [October 26, 2010 Dear Colleague Letter](#) from OCR states that, "School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR."

State Level

- Laws requiring training for educators on creating safe, supportive schools and bullying prevention.

5. Incorporating Student Involvement

Today's students, who have benefited from awareness and the impact of bullying at a rate greater than any generation before them, are uniquely positioned—with support—to lead in bullying prevention.

6. Promoting Self-Advocacy

Self-advocacy is when a student with an I/DD learns how to communicate what he or she wants and needs in a straightforward way. Self-advocacy in a bullying situation is important as students should be involved in deciding how to respond and what steps to take to address their bullying situation. This involvement can provide students with a sense of control over their situation and help them realize that someone is willing to listen, take action, and reassure them that their opinions and ideas are important.⁶

7. The Power of Bystanders

Students with disabilities are bullied at a statistically higher rate than their peers without disabilities. Two indicative factors of becoming a target of bullying—social isolation and challenges in navigating social relationships—are often characteristic in students with disabilities. Students with disabilities may have only a few or no friends: it is easier for a bully to target students who are alone or do not have friends looking out for them. Peer engagement reduces bullying in the school climate. Research has shown that more than 50% of bullying situations stop when a peer intervenes. Peer influence is powerful. Learn more about PACER's peer advocacy program.

8. Positive Peer Interaction

When students with I/DD are equipped with the skills and opportunities to develop friendships and interact with peers, it increases their ability to handle inappropriate behavior. The IEP team can work together to identify opportunities to engage in and learn social skills. It's important that students with I/DD have the opportunity to interact socially with their peers without disabilities, creating a social network.

9. Opportunities for Social Learning

Books, videos, and stories are powerful ways to share messages of inclusion, acceptance, and understanding with students without disabilities. These learning opportunities provide insight that students might not otherwise have access. PACER offers several resources—including a student essay, video, handout, and book—for use in the

classroom, which can then be followed up with thoughtful group discussion.⁷

Full Access to Educational Rights

Bullying of any student cannot be tolerated in our schools. A school where children don't feel safe is a school where children struggle to learn. As schools and communities move forward with bullying prevention education and creating safe environments, there must be an emphasis ensuring that students with I/DD are safe from disability harassment and have full access to educational rights. Every student, including and especially students with I/DD, deserve to thrive in a safe school and classroom free from bullying and harassment. Students with disabilities who are eligible for special education under the Individuals with Disabilities Education Act (IDEA) have an Individualized Education Program (IEP). The IEP can be a helpful tool in a bullying prevention plan. For more information, see PACER's "[Individualized Education Program \(IEP\) and Bullying.](#)"

¹ British Journal of Learning Support, 2008.

² August 20, 2013 letter by Michael Yudin, Assistant Secretary for the Office of Special Education and Rehabilitative Services, available at <http://www.ed.gov/blog/2013/08/keeping-students-with-disabilities-safe-from-bullying/>.

³ School resource officers often rely on the [StopBullying.gov](#) resources, training materials, and the law enforcement user guide, to support their classroom bullying prevention efforts.

⁴ In October 2014, OCR published another Dear Colleague letter expanding on its previously issued guidance. The letter and accompanying fact sheets reinforce schools' responsibilities regarding the bullying of students with disabilities on any basis.

⁵ See: <http://www.stopbullying.gov/laws/>

⁶ PACER's Student Action Plan is a self-advocacy resource. It includes three simple steps to explore specific, tangible actions to address the situation: (1) Define the situation; (2) Think about how the situation could be different; and, (3) Document the steps to take action.

⁷ For more information, see PACER Center website in the "[Students with Disabilities](#)" section.

Addressing the Complex Communication Needs (CCN) of Victims with Disabilities

*by Beverly Frantz, Sexuality and Criminal Justice Project Director,
Institute on Disabilities, Temple University*

Our current levels of knowledge, policy and practices are insufficient to address the issues people with complex communication needs (CCN) face when they encounter the criminal justice system as victims, witnesses, or defendants. People with CCN are individuals with disabilities who have significant difficulty being understood, especially by people who are not familiar with their manner of communication. People with CCN may also have problems understanding what others are saying. Complex communication needs may be the result of:

- Acquired disease, such as Parkinson's disease, ALS, etc.
- Stroke
- An acquired condition, such as a head injury or injuries that may have resulted from abuse/neglect
- A developmental disability, such as an intellectual disability, cerebral palsy, or autism

In general, people with CCN do not communicate in a manner that can be readily understood. However, it is critical for criminal justice professionals to understand they can and do communicate effectively, and this is especially important for criminal justice professionals to acknowledge when supporting crime victims. People with CCN may use picture symbols, speech generating devices, eye movement, alphabet/language boards, signs and gestures or other techniques to improve the effectiveness of their communication.

Approximately two million people in the United States have CCN. This means 8 to 12 out of 1,000 Americans have significant difficulties communicating their needs. Recognizing the important role that

communication plays in a person's quality of life, self-determination, and self-advocacy is central to understanding this issue, especially since individuals with CCN face a much higher risk of becoming the "perfect victim." Research focused on the incidence and prevalence of sexual victimization, abuse and neglect of individuals with disabilities has resulted in policies and services being established or expanded to meet the needs of people with disabilities.

What is missing from the research is a discussion specifically concerning individuals with CCN in the criminal justice system. Individuals with CCN may be perceived to be unable to participate in the legal process and/or receive services offered by local victim service programs. If an individual with CCN wants to provide information to law enforcement, but the officer cannot understand the individual, does the investigation stop? Typical responses when people with CCN are not understood include the listener nodding their head, which is moving the head up and down as a way of indicating "yes," or acknowledging they understand the communication by using words such "OK, Yea, I got it," or similar affirmative words, and/ or by making some sort of facial expression and then walking away.

For example:

A young women with CCN disclosed she had been raped. The police officers have a difficult time understanding her and write in their report that the victim identified "Jerry" as the perpetrator. The prosecutor states that if a DNA test confirmed the victims' identification of the assailant, the case would proceed to trial. However, the DNA test revealed the assailant was someone else, someone with a similar

sounding name of the person identified by the victim, and who lives in the house with the victim. Due to the discrepancy between the victim's identification of the assailant and the DNA test results, the prosecutor declines to move the case forward.

This example raises some important questions, such as:

1. Did the victim identify the wrong assailant?
2. Did the police officers misunderstand the victim, believing they heard "Jerry," instead of "Garry?"
3. In subsequent interviews with the victim, did the police and prosecutor rely on the initial police report that misidentified "Jerry" as the assailant?

Although the victim tried to tell the police officers that it wasn't "Jerry," but rather "Garry," who assaulted her, the officers were not able to understand her. Unfortunately, they did not know how to provide the victim with a way to clarify her response. As a result, not only did she not get her day in court, but she will be less likely to report in the future, and continues to be the "perfect victim."

Forensic interviews and judicial proceedings differ from typical communication. They can create an emotional context of fear and anxiety, caused by being in an unfamiliar environment and questioned by an unfamiliar authority figure. This formal communication interaction of being asked questions with the expectation that the questions will be answered in a typical manner is counter intuitive to one's usual conversational style.

Additionally, the forensic interview and additional judicial proceedings may include words that are part of the criminal justice and/or sexuality lexicon that are not unfamiliar to the individuals with CCN. At school, comprehensive sex education is not offered to students with CCN. At home, families frequently do not know how or when to begin a conversation about healthy sexuality. The lack of comprehensive sex education, especially foundational issues such as boundaries, touch, feelings, and the vocabulary related to these areas, compound the difficulties individuals with CCN encounter when recognizing and disclosing sexual assault, abuse and neglect.

When assisting crime victims with disabilities, the goal of any interview is to gather credible information. The following tips will help to ensure that the information provided by an individual with CCN is accurately understood by the interviewer. Helpful tips include:

- Consider the environment. Whenever possible conduct the interview in a quiet space. Be aware of and try to avoid sounds created by copy machines, telephone, outside traffic, air conditioning/heating systems, tree branches brushing against a window, and voices outside interview room.
- Fewer distractions help both the individual with CCN and the interviewer to focus on each other's words. Sit facing the person. Try not to move around too much or create any distractions, such as: answering a cell phone; shuffling papers; standing up and down; and making facial expressions.
- Begin the interview by introducing yourself, explaining your role and asking the individual with CCN what their name is, and ask what is the most comfortable way for the person to communicate with you. Find out how the person indicates "yes" and "no", their ability to spell (e.g. to give you the first letter of a word you are having difficulty understanding). Learn what other strategies they typically use (e.g. a communication device) and make sure they have access to it during the interview.
- If you don't understand or aren't sure what the person is saying, be sure to ask for clarification. Be comfortable with providing the individual with authentic feedback about what you have, or have not, understood. Ask "can you tell me another way".
- Be patient. Refrain from asking a question before the previous question is answered. Stay focused on the individual and pay attention to the individual's body language. Consider conducting several short interviews, rather than a longer one.

Remember there are resources and advocates who can help you in assisting crime victims with CCN. Consider contacting [The Arc's National Center on Criminal Justice and Disability™](#), your local chapter of The Arc, the Autism Society, United Cerebral Palsy Association, your state Office of Behavioral/Intellectual Disabilities, or other disability organizations who may be able to provide additional information and support.

Trauma-Informed Care and Individuals with I/DD: How Symptoms of Trauma Manifest as Behavioral Issues

By Karyn Harvey, Assistant Executive Director of Quality Supports, The Arc Baltimore

Criminal justice professionals must know the symptoms of PTSD and the ways in which those symptoms are likely to manifest behaviorally in individuals with I/DD. Individuals with I/DD have many sources of trauma in their lives. The profound effects of bullying have been well documented at this point.¹ It is safe to say that almost every person with I/DD has experienced some form of bullying, and that the majority of them have experienced it in an ongoing manner. They have been laughed at, taunted, called the “R” word, excluded, and maligned—all in the course of their daily lives. In addition, the Spectrum Institute 2012 report concluded that over 70 % of people with disabilities have experienced sexual, physical, and or financial abuse, and over 90% reported that it was ongoing.²

The sources of trauma are everywhere in the lives of individuals with I/DD, and the effects are very real. There are four main symptoms of post-traumatic stress disorder outlined in the DSM-5.³ They include:

- Intrusion
- Avoidance
- Negative alterations in cognitions and mood
- Alterations in arousal level.

Each symptom might manifest behaviorally and disrupt the daily existence of individuals with I/DD.

The first symptom of intrusion may include

nightmares, perseveration and even possible flashbacks. Numerous individuals with I/DD experience flashbacks and believe themselves to be back in the situation in which they were abused years ago in the present. Some victims suddenly believe they are back in an institution in which they were abused and they believe some innocent person is the staff who abused them. It takes a great deal of time to bring them back to the present and help them believe that they are now safe. Later, that person may have no recollection of the event and does not understand the effects of his or her erratic, often aggressive behavior. There is often a glassy-eyed look during these flashbacks and a lack of responsiveness. At that time the person may be brought back to reality by the presence of someone entirely different who can disrupt their delusion and assist them in leaving the situation in which that person was unexpectedly triggered.

The next symptom is avoidance. When this symptom is manifest in an individual with I/DD it might lead to a variety of attempts to escape or avoid situations or people that are associated with past trauma (for example, chronically running away from home when certain staff members are working). Although the staff member is not abusive, the person may have certain interactive styles that resembled staff who have been abusive in the past. This might also occur when individuals are living with another individual that he or she does not feel safe with. When a person

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perceives themselves to be in danger, regardless of accuracy of that perception, they often react by panicking and attempting to leave or avoid the perceived source of danger.

Another symptom of trauma is negative alteration in cognition or mood. Individuals may perceive people as trying to hurt them and may respond negatively, even aggressively, even though there is actually no real source of danger or attack. This is similar to the flashback situation but it does not involve an actual hallucination. People often overreact to possible teasing or slight rejection or other stimuli that appear harmless, but actually trigger deep emotions from past trauma. The reaction of the individual with I/DD may be extreme and disproportional. There may be obsessions about avoiding the perceived source of danger and there may be extreme responses in the presence of the person or situation perceived as dangerous.

Finally, a last symptom of trauma is alteration in arousal and reactivity. The term “hyperarousal” describes this symptom. It refers to a state of agitation in which the individual is easily triggered into explosive behavior and is constantly ready for something horrible to occur, such as an attack, disaster, or betrayal. They are easily startled or triggered and may destroy property or act aggressively when triggered by a perceived danger or something that sets off a reminder of past trauma in the recesses of their deep emotional or implicit memory. Individuals with I/DD may have serious behavioral issues that are not, in fact, deliberate or calculated acts of destruction or aggression but are, instead, irrational responses to past and unresolved trauma. This is particularly common with individuals who have histories of institutionalization or severe in-home abuse.

It is critical trauma victims with disabilities receive the appropriate therapeutic treatment and supports. More and more therapists have come to understand that many treatment modalities are easily modified in order to be able to support individuals with I/DD.⁴ Therapeutic supports are particularly useful to those who have suffered trauma and struggle with symptoms of PTSD.⁵ In addition, trauma-informed care training of direct staff is used more and more frequently to enable staff to work more effectively

with individuals with trauma histories.

It is also critical that we, the professional community, understand that individuals who have been psychologically damaged through trauma may manifest symptoms of PTSD in ways that appear deliberately aggressive but are, in actuality, emotional, reactive, and irrational. Rather than approach their behavioral issues as needing to be controlled and contained, providing them with a sense of safety and support facilitates healing and ultimately reduces behavioral incidents.

¹ Wolke, D. and Leveya, S. Long term effects of bullying. Arch Dis Child Feb 10 2015.

² Baladerian, N. Coleman, T. and Stream, J. Abuse of People with Disabilities Spectrum Institute: LA. 2012.

³ American Psychiatric Association. (2013) *Diagnostic and statistical manual of mental disorders* (5th ed). Washington DC: Author.

⁴ Fletcher, R.ed. *Psychotherapy for Individuals with Intellectual Disabilities*. New York: NADD.2011.

⁵ Van der kolk, B.,McFarlane, C. and Weisaeth,L. eds. *Traumatic Stress: the Overwhelming Experience on Mind, Body and Society*. New York: Guildford,1996.

Know the Law! ADA Accommodation for Crime Victims with I/DD

Shirley Paceley, Director, Blue Tower Training

Some people with I/DD will need an accommodation (or some type of support) to fully participate in the criminal justice process. A proactive, individualized

“...we need to establish practices that are responsive to people with disabilities and assure effective communication. This is not only the law; it is the right thing to do.”

response to needed accommodations provides the opportunity for victims with disabilities to have justice. The right to reasonable accommodations for people with disabilities is included in the Americans with Disabilities Act. This act provides broad protections for people with disabilities and provides guidelines

for access to programs, services, facilities, and activities relevant to criminal investigations and prosecution. Title II of the ADA requires that all programs, services, and activities of a public entity, such as a police department or a court house, be accessible to individuals with disabilities. Under Title II, a public entity must furnish, at no cost to the requester, any auxiliary aids or services necessary to ensure that communications with people with disabilities are as effective as communications with others and to ensure that individuals with disabilities can fully enjoy the entity’s programs, services, and activities.

In determining what type of auxiliary aid and service is necessary, a public entity must give primary consideration to the request of the individual. Therefore, we need to establish practices that are responsive to people with disabilities and assure effective communication. This is not only the law; it is the right thing to do. All citizens should have equal access to public services that provide them with safety and justice.

Most accommodations mentioned here are for people who communicate in a non-traditional manner. Some examples of accommodations include:

- Individualized Communication Device
- Pictures to communicate by pointing
- Plain language (by investigator and/or attorneys)
- Answering with only Yes or No
- Large Print materials
- Extended response time to answer questions
- “Showing” instead of “telling”
- Writing words instead of speaking words
- Drawing pictures instead of, or in addition to, speaking words
- Facilitated Communication

In order to find out if someone needs an accommodation, criminal justice professionals can:

- Ask the victim (do this first)
- Ask a family member
- Ask a friend
- Ask a staff member at a disability organization

General approach regarding accommodations:

1. Be flexible
2. Do not automatically say 'no' to requests
3. Discuss the request with a supervisor if you have questions
4. Provide the accommodation as requested by the individual if at all possible.
5. Check in with the person to see if the accommodations are working.

For prosecuting attorneys, it is always good practice to file a pre-trial motion regarding accommodations that would be needed for the person in court. The Judge can then make a ruling. There is case law in which accommodations were allowed including: victim allowed to tap a pencil to answer yes and no questions, victim allowed to answer yes and no questions and to point, and therapy dog allowed in court to support the victim. Other examples include: victim allowed to point to pictures to explain what happened to them and victim allowed to testify without the presence of her mother in the courtroom (who tried to keep the daughter from testifying).

For some victims with I/DD, accommodations during the investigation and during the court process may be the only key to justice!

A Call to Action for Criminal Justice Professionals

At all stages in the criminal justice system, victims with disabilities are more vulnerable than others in our society to being unseen, unheard, casually dismissed and, tragically, forgotten. They face not only further victimization, but in extreme cases, possible death. Injustice endured by crime victims with disabilities threatens not only their own safety, but the safety of all members in society. Victim service providers, law enforcement and legal professionals possess great power and have exceptional opportunities, due to the nature of their jobs, to ensure the rights of victims with disabilities are protected and perpetrators are held accountable. The National Center on Criminal Justice and Disability™ is committed to supporting criminal justice professionals in this effort each step of the way. To get started, consider taking a few of the following steps:

- Every voice counts! Sign The Arc's pledge to stop violence, abuse and bullying of people with I/DD
- Learn more about victimization of people with disabilities by watching [free archived webinars](#) on the topic and signing up for future NCCJD webinars
- Use the [Pathways to Justice video](#) and [conversation guide](#) to address this issue in your community; find better ways to assist crime victims with disabilities and begin creating possible solutions
- Use [NCCJD's information and referral service](#), and refer others, when assisting crime victims with disabilities
- Refer to [NCCJD's state-by-state map](#) or [look up resources by profession](#) (law enforcement, victim service provider or legal professionals) when assisting crime victims with disabilities

"Injustice endured by crime victims with disabilities threatens not only their own safety, but the safety of all members in society."

- Suggest names of expert witnesses and new or model legislation for NCCJD's database related to crime victims with disabilities (click on "submit a resource")
- Stay current on criminal justice and disability issues by following [NCCJD's Facebook page](#)

For more information, and to learn how you can become a champion for justice in the lives of crime victims with disabilities, contact NCCJD at www.thearc.org/NCCJD/about/request-assistance.