Sex Offenders with Intellectual/Developmental Disabilities:

A Call to Action for the Criminal Justice Community

Developed by The Arc’s National Center on Criminal Justice and Disability™
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 to 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, family members, practitioners, and leading experts in the fields of disability, criminal justice, and sex offenders and draws on the experiences and expertise of the co-authors listed below. NCCJD deeply appreciates the valued contributions of these visionary advocates, families, and experts:

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Sex Offenders with Intellectual/Developmental Disabilities: A Call to Action for Criminal Justice Professionals

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A Call to Action for Criminal Justice Professionals
**Introduction**

People with intellectual and developmental disabilities\(^1\) (I/DD) who allegedly violate sex act-related laws often face harsh consequences that fail to account for disability. For criminal justice professionals to effectively respond to these allegations and/or violations, they must first be aware of the presence of disability and understand how it influences behavior: awareness and understanding aid in crafting effective strategies for both protecting public safety and rehabilitating sex offenders with I/DD.

Throughout this paper, the term “sex offender” is used with a limited meaning: encompassing an individual’s actions that appear to violate a statute on its face. Readers are encouraged to keep an open mind about whether the previous interpretation of these statutes are accomplishing the public safety goals for which they were enacted. “Sex offender” covers a broad variety of offenses and circumstances, and subsequently, varying levels of risk.\(^2\) Society, however, falsely assumes equal danger from everyone designated with this label.

**What we Know—An Overview of the Research**

There are large gaps and inconsistencies in sex offense research specific to people with I/DD, and particularly intellectual disability (ID).\(^3\) However, research on the general population suggests counterfeit deviance—a hypothesis distinguishing paraphilic\(^4\) behaviors and unlawful behaviors—as a risk factor for sexual offending,\(^5\) but likely not a primary indicator of risk.\(^6\)

Identification off/DD is the first prong of successful risk assessment, the tool used to decide how statistically likely a person is to commit another offense. Actuarial Risk Assessment Instruments (ARAI) can be either static (looking at what a person has done), or dynamic (looking at predictors based on personality, societal interactions, and other measures), and often include a combination of the two. Regardless of the ARAI selected, checking for accuracy of ratings in the ID population is a crucial step,\(^7\) and consideration of life experience should always be included. People with I/DD often live in environments that limit sexual relationships and privacy—even when engaging in “personal sexual behavior.”\(^8\) They often receive little to no education about sexuality as children or youth, and parents may struggle to discuss these concepts in meaningful ways. Given these facts, public masturbation charges should be considered in a much different light than other more serious charges, such as repeated cultivated child molestation.

For the general population, research indicates that treatment plans focusing on community involvement, successful employment, and positive self-image are generally more effective than those that segregate and confine offenders, and focus primarily on acknowledging and suppressing problematic behavior. When adapting treatment programs for people with I/DD, it is most effective to focus on responsibility, including learning style, cognitive ability, and life circumstances/experiences. Ensuring that treatment is relevant to the individual client allows for effective treatment of people with I/DD.\(^9\)

**Stories from the System\(^11\): Blake**

Blake, a young man with autism, learning disabilities, auditory processing disorder, and borderline ID,\(^12\) is
a registered violent sex offender for the rest of his life. If Blake’s story was told without details about his age, he would be eligible for victims’ services rather than reporting to register as a sex offender every three months. Blake struggles to make friends, and has been routinely bullied and taken advantage of his entire life. An encounter with a girl 6 years his junior placed an unwitting Blake in a sexual encounter that has destroyed his life.

After months of Blake receiving sexual texts from the young woman, she began using phrases Blake did not understand like “friends with benefits” and “role playing.” She met with him in person to “hook up,” and performed oral sex on Blake. Blake eventually asked her to stop once he was able to process what was happening, which she did. She told her parents about the encounter, leading to Blake’s arrest.

Police arrived at Blake’s home in the middle of the night to question Blake. Blake’s parents were asleep upstairs while he was questioned. Thinking she was the one in trouble, Blake fully complied with police, incriminating himself and getting arrested in the process. Blake never understood his rights, and was charged with two counts of carnal knowledge with a minor. Blake was charged, and misunderstood his plea deal as explained by his lawyer (who had a mental illness and committed suicide soon after representing Blake). Blake is now required to register as a violent sex offender for life. As a result, Blake deals with depression in addition to his diagnoses pre-dating these events, and is unable to fulfill registration requirements independently.

Stories from the System: Adam

Adam was born on December 5th, 1986, and experienced multiple seizures early in life resulting in a diagnosis of developmental delay. According to his school records from 1998,

Adam’s ability to problem solve in all respects is an area of concern for people who work with him...School staff looking at Adam’s future have concerns about Adam acting independently, handling even small life problems on his own and perhaps being taken advantage of by others who might make decisions for him or have him act in ways that would not be in his own best interests.

“My son is now a felon who is listed as a violent sexual predator for life. This situation puts him at an extremely high risk of being institutionalized. His name and face are all over the internet for the rest of his life. He must register every 90 days for the rest of his life, even when he is 90 years old or terminally ill. He will never be able to attend any of his children’s graduations, plays or sports events, not ever be able to take them to a park. His children will be ridiculed and ostracized as well. He will be limited in where he can live, will be looked down upon by his community forever, and find it practically impossible to get a meaningful job or any job for that matter. Every time he travels he will be limited in where he can go or where and how long he can stay. He will not be able to visit his grandparents or relatives in other states because of the numerous confusing rules for each state that he would travel through. All of this is because of a one-time occurrence between a young developmentally delayed teenager with Autism and ID, who had no idea how to handle a situation with a sexually aggressive female teenager. Our son has never been in any type of trouble, has never even been intimate with a girl or had any friends in his entire life, and now he will have his life destroyed forever.”

–Blake’s father

In 1999, another young man, Tim, moved next door as a foster child. At 10 years old, Tim was three years younger than Adam, but higher functioning and deeply troubled—he had been removed from his home due to regular sexual abuse. Adam’s family became a safe haven for Tim, and the two boys became friends. About five years ago, Adam’s mother caught Tim experimenting sexually with Adam and warned him if he did not stop, he would no longer be part of their family. Though Adam’s parents let the
neighbors know that the boys should never be alone together, Tim continued to molest Adam without their knowledge.

In February of 2012, Tim’s sister left her daughter, Alice, with Tim’s adoptive parents and disappeared. Tim was given responsibility for waking her in the morning, getting her to school, and getting her home. During this time, Tim would sexually molest Alice and eventually began calling Adam over to the home to watch. After Adam watched a few times and Tim laughed about it, Adam asked Alice to touch him inappropriately, which she did. Adam also took Alice out in his car, and again asked her to touch him. Alice told the adults in her home, who then approached Adam’s parents. After a six-week investigation, both boys were arrested and spent the night in jail. At trial, Adam had to stand next to his own molester in court as if he was not a victim at all.

Adam readily admits to everything that happened, though Tim still denies any wrongdoing. Adam eventually pled to one misdemeanor charge of sexual exploitation of a minor child under 17, for which he must serve 2 years on probation wearing an ankle bracelet, and ten years on the sex offender registry. In addition, Adam was to attend a court-appointed sex offender group. The doctor responsible called after ten minutes with Adam to say he should not be a part of the group due to his prominent developmental disability—Tim, however, continues to attend. According to a risk assessment after the incident,

....Adam does, however, have difficulty asserting himself when difficult situations may occur. As indicated in his assessment, Adam persistently states that he would inform his parents of problems that may arise between himself and others as it relates to sexual or inappropriate behaviors of a variety of types. Adam gives no indication of self-protection such as confronting the person, resisting or fighting back, yelling or calling authorities.

Currently, per sex offender regulations, Adam has been forced to move out of his own family’s home because the child victim was their neighbor. Adam’s father had to move out with him because Adam is unable to live without supports and cannot fulfill the requirements of probation or registration on his own. He is no longer able to participate in many of the recreation activities he cherished prior to this incident. Adam’s mother continues to experience chronic health problems, and the family was unable to travel to see their new grandson at Christmas due to financial and logistical struggles relating to Adam’s arrest. The family continues to struggle with guilt that they should have done more to protect their son.

**Challenges Specific to Sex Offenders with I/DD**

As evidenced by the stories above, the challenges facing sex offenders with I/DD are daunting. For starters, families are often as affected by negative consequences—for example, registration requirements on sex offender registries—as the individuals themselves. The struggle to maintain community engagement, a factor that is proven to reduce recidivism, is an uphill battle, particularly given geographic restrictions often placed on registered sex offenders. In addition, basic skill areas are often found lacking in sex offenders with I/DD, including the following:

- Communication (understanding consequences, expressing emotions)
- Sex education (consent, appropriate touch, and healthy expressions of sexuality)
- Seeking help from peers or professionals
- Moral reasoning (understanding right from wrong)
- Identifying and becoming involved in leisure activities
- Other skills identified as important in community integration

Criminal justice personnel “may have a general appreciation that persons with [intellectual disability and problematic sexual behavior (IDPSB)] can be more
concrete and slower in their thinking and may need more time to process and respond to information and directions. However, criminal justice professionals providing community supervision services may not fully appreciate essential but more nuanced issues associated with individuals with I/DD that may impede effective communication and supervision service delivery.”

These include the following:

- Need for specificity and repetition
- Impact of impaired verbal comprehension and reading skills
- Inherent difficulties with abstraction and generalization
- Tendency toward acquiescence bias
- Sensitivity to criticism

In addition, professionals may create dangerous situations by engaging in any of the following:

- Infantilizing the client, treating them like a child due to their intellectual functioning
- Over pathologizing the client, wrongly attributing behavior to sexual deviance
- Minimizing accountability for behavior
- Ignoring potential for risk
- Reacting disproportionately (for example, stories about community outrage surrounding sex offenders moving into the neighborhood)

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 created a number of tools and resources for criminal justice professionals to help identify and accommodate people with disabilities in the criminal justice system. The Pathways to Justice Model (see below) highlights cracks in the system that keep people like Blake and Adam from accessing services they desperately need.

Emerging Issues for Sex Offenders with I/DD

NCCJD has received numerous requests from around the country from individuals who fall completely outside typical explanations and patterns of sex offending behavior, creating an entire sub-population in desperate need of recognition, treatment, and legal assistance. Written as an educational resource for criminal justice professionals, this paper aims to outline the issues faced by sex offenders with I/DD, and suggests best practices and potential solutions. The paper is directed to attorneys, advocates, treatment providers, and others seeking alternatives to incarceration, but will also be useful for parents.

ABOVE: The Pathway to Justice™ Model.
or other disability advocates looking for an overview of the issue. To address this emerging issue, NCCJD asked people with disabilities and their families, and leading experts in the field to identify issues and propose solutions around the following topics:

• Megan’s Law
• Risk Assessment and Promising Instruments
• Community Safety Planning
• Employment Services
• State Protocols

The paper closes with a call to action, challenging criminal justice system professionals to proactively examine fact patterns (the true and accurate description of what happened in a crime) of sex offense cases involving people with I/DD; to strongly consider the role disability plays in these types of offenses; to find alternatives to incarceration and sex offender registries for people with I/DD when appropriate; and to increase education and prevention work, thereby reducing initial offenses and recidivism.

1 For definitions of I/DD, see The Arc’s fact sheet: http://www.thearc.org/what-we-do/resources/fact-sheets/introduction-to-intellectual-disability. Generally, intellectual disability (ID) occurs prior to age 18 and significantly limits intellectual functioning and adaptive behavior. Developmental disabilities (DDs) are attributable to mental and/or physical impairments occurring before age 22 and likely to continue indefinitely. DD’s substantially limit three or more major life activities. Many people with ID will meet the requirements for DD as well.

2 Within the criminal justice community, risk generally connotes risk for reoffending and should not be confused with dangerousness.

3 American Association on Intellectual and Developmental Disabilities et. al., Public Policy Agenda for the 113th Congress, at 6 (“Intellectual disability... is characterized by significant limitations in intellectual functioning and in adaptive behavior, which covers conceptual, social, and practical skills. This disability originates before the age of 18... [and] covers the same population of individuals who were diagnosed previously with “mental retardation”...”).

4 DSM V at 685 (“The term paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners.”).

5 William R. Lindsay, Model Underpinning Treatment for Sex Offenders with Mild Intellectual Disability: Current Theories of Sex Offending, 43 MENTAL RETARDATION 6, 428-441 (December 2005) (citing lack of sexual knowledge and social skills as a cause of sex offending behavior).


7 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, ASSESSMENT, TREATMENT AND SUPERVISION OF INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND PROBLEMATIC SEXUAL BEHAVIORS, at 10-13 (2014) (may also lead to difficulties navigating “consent”).

8 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, ASSESSMENT, TREATMENT AND SUPERVISION OF INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND PROBLEMATIC SEXUAL BEHAVIORS (2014) (may also lead to difficulties navigating “consent”).

9 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, ASSESSMENT, TREATMENT AND SUPERVISION OF INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND PROBLEMATIC SEXUAL BEHAVIORS (2014) (may also lead to difficulties navigating “consent”).

10 More examples include: https://www.eparisextra.com/paris-texas-news/8074/8074.

11 Borderline ID means IQ between 70-85 and higher functioning in certain areas. However, functioning is still severely limited.

12 CODE OF VIRGINIA § 18.2-63 (“Carnal knowledge of child between thirteen and fifteen years of age. A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.”).

13 Name changed to protect identity.

14 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, ASSESSMENT, TREATMENT AND SUPERVISION OF INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND PROBLEMATIC SEXUAL BEHAVIORS, at 19 (2014) (may also lead to difficulties navigating “consent”).


16 ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, ASSESSMENT, TREATMENT AND SUPERVISION OF INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND PROBLEMATIC SEXUAL BEHAVIORS, at 19 (2014) (may also lead to difficulties navigating “consent”).

17 DSM V at 685 (“The term paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners.”).

18 Id.
Individuals with I/DD may act improperly due to having poor social skills, poor impulse control, a lack of formal sex education, as well as a lack of opportunity to experiment sexually with peers. These deficits can result in criminal charges for sexual assault, sexual contact, and endangering the welfare of a child. All of these types of offenses require registration as a sex offender for both adult and juvenile offenders.

Besides potential incarceration, such convictions carry significant additional consequences under each State’s Megan’s Law statute. Every State has passed and upheld a statute requiring sex offenders to register their whereabouts, and to update those registrations on a regular basis. In addition, all States have some level of community notification, including public access to a website with information about offenders, and most States have some form of community supervision for convicted sex offenders. Each of these obligations imposes responsibilities upon registrants which must be met over a long period of time. Individuals with I/DD often need assistance to understand and comply with these requirements or they face additional prosecution and other sanctions.

**Megan’s Law Origin**

In New Jersey, in 1993, Jesse Timmendequas, who had been convicted of a sex offense, was released from custody and moved home with his mother. From that location, he lured 6 year old Megan Kanka into the house, where he sexually assaulted and killed her. While such heinous crimes are rare, there was enormous public outcry about the lack of oversight and notification conducted when sex offenders are released into the community. Laws creating registration and notification procedures are routinely referred to as “Megan’s Law”, since New Jersey’s original statute, passed on October 31, 1994, was named for Megan Kanka.

Versions of sex offender registration and/or notification laws have existed in various forms throughout the United States for over 70 years, notably in California. In response to passage of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act of 1994, every State has a statute mandating registration of convicted sex offenders and notification to the public using various methods and in certain circumstances. Minimum standards for jurisdictions to meet are set forth most recently in the Sex Offender Registration and Notification Act of 2006 (SORNA).

The purpose of these statutes is not punitive, intended to punish the offender, but rather to provide accurate information to the community. The intention is that people in the community, upon being told that a sex offender is living, working, or attending school in the vicinity, will undertake certain preventive actions to protect themselves and their children. At present, no research literature has been
produced which demonstrates a causal link between these laws and recidivism—in fact, in some cases quite the opposite.¹

Megan’s Law, or Registration and Community Notification statutes, create primarily two obligations: 1) the registration of offenders who have been convicted, adjudicated delinquent, or found not guilty by reason of insanity for one of the offenses listed in the statute and; and 2) the determination as to whether law enforcement, community organizations, schools or neighbors will be informed about the offender’s home, school and work address.

In addition to these registration and notification requirements, most states have passed some version of a supervision statute, assigning parole or probation officers to supervise caseloads of convicted sex offenders and impose and monitor certain conditions. These laws, ostensibly intended to reduce sexual assault recidivism, can create obstacles to successful integration in the community. Failure to comply with registration obligations and supervision conditions can result in new criminal charges and a return to incarceration. These obstacles are a particular problem for people with I/DD.

Unquestionably, the two biggest areas of impact for offenders with I/DD are housing and employment. Most supported housing options are not geared towards assisting offenders with meeting their registration requirements. In any event, fear and stigma reduce the likelihood that they will be accepted into such housing. In addition, HUD, federally subsidized housing, has restrictions on sex offenders in their apartment complexes, seriously limiting housing options in general.⁵ These limitations make affordable housing almost impossible to obtain and restrict offenders with I/DD from moving in with supportive family. Homelessness often results.

Finding employment as an individual with I/DD is a challenge; a sex offense conviction compounds the problem and registration requirements further limit options. Combining these characteristics greatly increases the likelihood that employment,

<table>
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<tr>
<th>Types of Sex Offender Statutes</th>
<th>Registration Statutes:</th>
<th>Requires offenders to register their home address regularly</th>
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<tr>
<td></td>
<td>Community Notification Statutes:</td>
<td>Displays home address, photograph, and other basic information about offenders on the internet</td>
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<tr>
<td></td>
<td>Supervision Statutes:</td>
<td>Requires offenders to check in regularly with probation or parole officers</td>
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The compliance challenge of ongoing conditions and obligations becomes clearer still when we consider the characteristics of an offender with I/DD.

- May not behave appropriately for age level, preferring to socialize with people who are younger.
- Easily influenced by others and anxious to please.
- Often followers rather than initiators, of criminal activity.
- Act impulsively and fail to understand consequences or seriousness of their actions.
- Be unable to read or understand the consequences of a conviction or plea.
- Lack ability to express sexuality in an appropriate manner.
- Live in an isolated fashion, spending time mostly with family or in a supervised setting.
- Lack access to good social activities or a peer group with whom to explore sexuality.
- Fail to receive sex education at home or at school, instead being treated like children.
particularly employment that provides enough salary to support oneself in the community, will never be secured. In addition to the conviction itself, Megan’s Law notification requirements may mandate a notification in and around a place of employment or school, virtually ensuring that no employer will hire the offender and no secondary school will allow attendance.

The compliance challenge of ongoing conditions and obligations becomes clearer still when we consider the characteristics of an offender with I/DD. They may not behave appropriately for their age level, preferring instead to socialize with people who are younger. They can be easily influenced by others and are anxious to please. They are often the follower, not the initiator, of criminal activities. They may act impulsively and fail to understand the consequences of, or the seriousness, of their actions. In addition, they may be unable to read and thus the ability to understand the consequences of a conviction or plea is limited. Specifically, when we consider inappropriate sexual behavior, people with I/DD may lack the cognitive ability to express sexuality in an appropriate manner. They may live in an isolated fashion, spending most of their time in supervised settings or with family members. They can lack access to good social activities and a peer group with whom to explore their sexuality. They may not receive the same sex education in school or at home and family members may treat them like children or fail to identify their need for sexual expression.

All of these differences can lead to inappropriate sexual behavior. The fact that an individual has a developmental disability does not act as a bar to criminal charges or prosecution and, as a result, individuals with I/DD may be convicted if found competent. That conviction, along with the usual stigma and limitations associated with a criminal conviction, now also includes Megan’s Law conditions and obligations which must be met for at least 15 years from the date of release into the community, if not for a lifetime. Over this time period, an individual must register with local law enforcement and verify the address either quarterly or annually. The individual must provide notification of any change of address or change of job. These conditions and obligations, including registration of home address and verification of a continued address, can be difficult to understand and difficult to comply with initially, as well as over time.

In addition to Megan’s Law obligations, the offender may be subject to supervision for life by a probation or parole officer. This sentence can also include limitations on living in any home with people under the age of 18 and approval must be obtained for any move, change in job or change in school status and limits use of the internet. The more independently a person is living, the more difficult it becomes to comply with the many conditions imposed as a consequence of a sex offense conviction. Without support, nor providers to interpret and negotiate the world for their clients, offenders left to fend for themselves are often unable to comply with registration requirements and with conditions imposed by a parole or probation officer. These failures can lead to reincarceration.

A final consequence of Megan’s Law obligations involves increased anxiety levels. Offenders with I/DD who are living independently and understand the possibility and ramifications of community notification suffer from a very high level of anxiety. This residual effect negatively effects their well-being and ability to live and work successfully. In order to respond to this need, counseling (which is modified to work effectively with people with I/DD) is an imperative part of any program intended to reduce recidivism and allow offenders with I/DD to live safely in the community.6

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1 Doe v. Poritz, 142 N.J. 1 (1995); Smith v. Doe, 538 U.S. 1009 (2003) (The Third Circuit has most thoroughly addressed the constitutionality of these statutes. See Paul P. v. Farmer, 227 F.3d 98 (3rd Cir. 2000); E.B. v. Verniero, 119 F.3d 1077 (3rd Cir. 1997); Alexander A. Artway v. Nj, 81 F.3d 1235 (3rd Cir. 1996)).
People with intellectual disabilities are often targets for sexual abuse, and some have sexually offended not long after having been abused themselves. A number of explanations have been offered as to why men with intellectual disabilities (ID) sexually abuse others: they themselves have been sexually abused; they lack opportunities for appropriate sexual expression; they lack an understanding that such behavior is illegal; they over-identify with children, as a result of their own developmental immaturity. Courts have also had to rule on whether, for the purposes of a Sexually Violent Predator (SVP) commitment, ID could be considered a “diagnosed mental disorder.” Usually, the court relies upon an additional diagnosis of an abnormality or personality disorder to uphold commitment, and most psychological experts have implied that ID does not predispose someone to commit sexual offenses and could not, by itself, qualify a defendant as an SVP. Yet, certain offenders commit their crimes as a result of poor judgment due to limited functioning and identification of that reason (as opposed to a diagnosis of a personality disorder) might be difficult for an expert to discern.

One of the major concerns regarding an individual who has an ID is his or her potential difficulty participating in treatment once committed under Sexually Violent Predator Acts (SVPAs). Achievements in treatment that purportedly lead to the reduction of sexual deviance are most often the catalyst to eventual release from confinement. Thus, the result of an individual’s difficulty or inability to understand treatment protocols and advance through the program is most likely a confirmed life sentence under civil commitment.

Courts, for the most part, have held that offenders are committable despite proof of ID, as long as the state makes an attempt to offer individualized treatment of a different sort to committed SVPs who cannot benefit from cognitive behavioral therapy. By way of example, the Iowa Supreme Court held that commitment as an SVP was appropriate “for a sex offender with mental retardation,” even if that condition prevented the offender from benefiting from treatment.

On the other hand, a New York trial court declared that pursuing proceedings to civilly commit a respondent with ID as a dangerous sex offender requiring civil management would violate due process. The court premised its decision upon a legislative finding that recidivist sex offenders “...should be addressed through comprehensive programs of treatment and management” and found it “difficult to imagine how [the respondent] could receive any treatment for any alleged sexual aberration, much less meaningful treatment” in his current condition. However, the case was overturned on appeal on the basis of the state’s “strong interest in providing treatment to sex offenders with mental abnormalities and protecting the public from their recidivistic conduct.” Despite the appellate court opinion’s reliance on purportedly...
supporting precedent, this case supports an inference that sex offender civil commitment can be used to warehouse individuals, especially those with limited community supports, and those seen as undesirables in society.

Sarah Geraghty, staff attorney for the Southern Center for Human Rights, offers insight into her experiences:

I cannot count the number of people I have met with mental retardation [ID] who are on the sex offender registry. These are often people from poor families whose public defenders “met ‘em and pled ‘em” guilty without any investigation into their mental capacity or the circumstances of the alleged crime. Jerome Chadwick, for example, has an IQ of sixty-five. He cannot read or write, tell time, perform simple arithmetic, or name the months of the year. Despite a tumultuous upbringing in the foster care system, Chadwick stayed out of trouble for most of his life. When he was twenty-four, however, he touched two teenage neighbor girls (hand to genital contact) while they were watching television on the couch. Chadwick pled guilty to child molestation and is now watching television on the couch. Chadwick touched two teenage neighbor girls (hand to genital contact) while they were watching television on the couch. He is not, however, pedophiles or rapists “predators” who lie in wait for children at bus stops.

Society must recognize inaccurate stereotypes about people with I/DD and correct them.
Introduction

Risk Assessment is a dynamic concept. Risk can never be accurately predicted, but can be effectively managed. Risk Assessments may need to be performed due to a variety of internal and external factors impacting risk. Some external factors are the need for supervision, the quality of staff providing supervision, and specific environments/factors which may trigger the individual to act out. It is important to understand how risk may be impacted in various settings including work, residence, and community. Internal factors affecting risk are physical health problems impacting ability to cope, appropriate medication for mental health issues, and daily mood and outlook conducive to safe or unsafe behavior.

Risk assessment should ascertain whether the problem is due to poor social skills and lack of understanding, or a true deviance (for example, true paraphilia¹ versus environmental factors and poor understanding of social consequences). The true rate of sexual re-offense in individuals with ID² remains difficult to quantify.³ In general, rates of sexual recidivism tend to be low and those with ID tend to have a low incidence of serious crimes.⁴

When performing risk assessments with people with ID, other behaviors usually need to be assessed for risk such as tendency toward violence, fire setting, stealing, etc...⁵ Additionally, there is great importance in clarifying specific questions the referral source wants assessed and answered. The referral question could pertain to level of risk in a specific area, needed levels of supervision, or call for a specific judgment on whether there is deviance or behaviors represent a mere lack of knowledge or need for environmental supports.

A Model for Understanding Risk Assessment

In performing a comprehensive risk assessment with someone with ID, three major factors that dramatically impact risk should be considered. These three areas act as concentric circles including: measuring ID, assessing mental health,⁶ and assessing the type and severity of offending behaviors.
When addressing ID, get a current assessment of each individual’s intellectual level and how intelligence could impact ability to understand right versus wrong and to understand sexual consent. Assessing with the Wechsler Adult Intelligence Scale, 4th Edition often shows interesting discrepancies between Verbal Comprehension, Perceptual Reasoning, Working Memory and Processing Speed. Specific areas of intelligence show ways staff can better monitor and lower risk. When looking at ID, it is important to assess any significant impulsivity or problems maintaining self-control, and also how much structure the individual may need in daily routines.

Second, issues with mental illness in this population are paramount, as dual diagnosis can result in poor decision making and/or delusions or hallucinations impacting offending behavior. Conduct thorough mental status exams and evaluate how well the individual deals with major life stressors. Medication compliance can become a major issue, as well as the willingness of the individual to see mental health as an ongoing issue.

Third, offending behaviors need to be assessed for possible deviant patterns that may need intensive treatment and supervision. If there are sex offending issues, it is very important to look at both static and dynamic risk factors. When looking at offending issues, ask questions about the individual’s history of offending as well as behavior problems from an early age. Look at whether criminal behaviors occur across the individual’s environments, or only in specific environments. Assess whether individuals with ID understand their need for supervision and how supervision can benefit their lives.

Promising Instruments

In regards to risk of sexually offending, past literature identifies specific issues impacting risk with people with ID:

- Social skills deficits
- Committing violent offenses
- Being unemployed
- Having a psychiatric history
- Having substance abuse or dependence
- Being susceptible to the influence of others
- Having a history of delinquency
- Poor response to treatment efforts
- Antisocial attitude
- Low self-esteem
- Impulsivity regarding sexual acting out
- High static risk factors

A good tool for assessing understanding of sexual issues is the Socio-Sexual Knowledge and Attitudes Assessment Tool, Revised. This assessment tool is effective for identifying, with the use of concrete pictures, a person’s understanding in the areas of: anatomy, men or women’s bodies, intimacy, pregnancy, birth control and healthy boundaries. Responses provide examiners with the individual’s understanding and attitudes about specific sexual situations. The test is normed on level of ID. This helps determine how much risk is related to lack of understanding vs. possible deviance.

The Assessment of Risk and Manageability of Individuals with Developmental and Intellectual Limitations who Sexually Offend (ARMIDILLO-S) assesses both Acute and Stable risk factors related to people with ID. (See Table 1 on the following page) This is an effective tool because it assesses risk as an ongoing relationship between the individual and his/her environment.

In summary, Risk Assessment for people with ID is far from an exact science. Pertinent assessment tools with other populations need to be adapted and sometimes risk issues are unclear. However, it is important that the professional conducting the risk assessment look closely at environment, and interview people who know the individual in each environment. Second, it is extremely important that a risk assessment be customized and specifically address questions the referral source needs answered; risk assessment covers too many areas not to be specific. Third, it is critical to assess both static and dynamic risk factors before making conclusions about risk. It is key to know the individual’s complete understanding of sexual situations and/or other risk
situations, not just to assume deviance is present. Finally, it is key when evaluating risk to look at the individual’s criminal and behavioral past, assessing all the settings where risk may be an issue. Often simple environmental planning can make a great impact in decreasing risk. For example, relocating an individual who is in a neighborhood that feeds his/her risk may significantly lower risk. Risk often changes over time, but it is extremely important that the professional performing the risk assessment understand the person’s needs in the areas of ID, mental illness, sexual issues, and offending behaviors. Ongoing risk assessment should be triggered by acute internal or external changes occurring with the individual or a pattern of behavior which could lead to legal consequences. Only a true comprehensive approach can give the direction that makes sense and helps the individual and their staff manage risk.

3 DSM V at 685 (“The term paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners”).

2 DSM V at 33 (“ID is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains…”).

TABLE 1: Assessment of Risk and Manageability of Individuals with Developmental and Intellectual Limitations who Sexually Offend (ARMIDILSO).

<table>
<thead>
<tr>
<th>Stable Items</th>
<th>Acute Items (measures changes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Supervision compliance</td>
<td>• Individual’s compliance with supervision or treatment</td>
</tr>
<tr>
<td>• Treatment compliance</td>
<td>• Sexual preoccupation</td>
</tr>
<tr>
<td>• Sexual deviance</td>
<td>• Victim-related behaviors</td>
</tr>
<tr>
<td>• Sexual preoccupations</td>
<td>• Emotional coping</td>
</tr>
<tr>
<td>• Emotional coping</td>
<td>• The use of coping strategies</td>
</tr>
<tr>
<td>• Relationships</td>
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<tr>
<td>• Impulsivity</td>
<td></td>
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<tr>
<td>• Substance abuse</td>
<td></td>
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<tr>
<td>• Mental health</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Stable Environmental Factors:</th>
<th>Acute Environmental Factors:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Staff’s attitude towards the individual</td>
<td>• Changes in monitoring</td>
</tr>
<tr>
<td>• Communication among support persons</td>
<td>• Changes in social relationships</td>
</tr>
<tr>
<td>• Specific knowledge by the support person</td>
<td>• Situational changes</td>
</tr>
<tr>
<td>• Consistency of supervision</td>
<td>• Changes in victim access</td>
</tr>
</tbody>
</table>


4 Hayes, S. 1991. Sex offenders. AU. N.Z. JOURNAL OF DEVELOPMENTAL DISABILITIES. (19), 201-219; but see or contra Gross, C. 1985. Activities of a Developmental Disabilities Adult Offender Project. WASHINGTON STATE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL: OLYMPIA, WA (found in Washington State reports of 21 to 50% of those with ID had committed a sex crime.); Sundram, C., 1990, Inmates with Developmental Disabilities in New York Correctional Facilities, NEW YORK COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED, Albany, NY (found a 38% rate of serious crimes in a sample of New York State inmates with IQ below 70); Lindsay, W. 2002, Research and Literature on Sex Offenders with Intellectual and Developmental Disabilities, JOURNAL OF ID RESEARCH. (46), 74-85 (concluded that studies finding high rates of sexual offenders in this population also had highly select samples often taken from maximum security prisons and high security hospitals.).

5 Lund, J. 1990. Mentally Retarded Criminal Offenders in Denmark, BRITISH J. OF PSYCH. 15(7), 26-31 (finding that up to one fourth of offenders with I/DD have committed violent offenses.).

6 In this context, mental health refers to mental illness, a disorder affecting a person’s thinking, feeling, or mood.

7 Shively, R. 2012. Working with Individuals with Intellectual and Behavioral Disturbances: Lessons Learned, CORRECTIONS TODAY, June/July.


Psychosexual evaluations (“Psychosexuals”) can be beneficial when used to assess likelihood of committing another offense and identify a plan to reduce the risk of committing another offense, and can help courts and teams identify appropriate treatment and specific supports needed to function safely in the community. They can be a critical first step in helping develop appropriate risk management plans.

Psychosexuals are dangerous when they overstep the information they can provide. These evaluations cannot tell you IF someone will commit another offense; nobody can predict the future and attempts to do so are not grounded in the knowledge base nor in best practices. They cannot tell you if someone HAS committed an offense. Psychosexuals cannot gather information that is not already present. Psychosexuals are unable to determine if someone will commit an initial sex offense.

Psychosexuals claiming to do the above are not grounded in literature and can be misleading and damaging to the subject of the evaluation, leading to undue restriction of rights and inappropriately high perception of risk.

**Reoffending**

The first goal of a psychosexual is to assess how likely it is that someone will commit another sex offense. Simple assertions about risk that are not grounded in known risk factors are less accurate than chance and should be avoided. Actuarial measures, such as the STATIC-99R, are tools that weigh risk factors which research suggests are related to reoffending.\(^1\) It is important to remember that this process compares groups of people to one person; it does not identify definite actions of an individual. Rather, the evaluation identifies a statistically significant likelihood of a certain action based on common traits across individuals. Because it compares an individual to groups of people, the results should be interpreted carefully rather than used as standalone statements.

The other way of assessing risk is through **Structured Clinical Judgments**,\(^2\) such as the SVR-20\(^3\) or the ARMIDILLO.\(^4\) With these tools the clinician rates the person on various characteristics that have been linked to reoffending. The ARMIDILLO is a relatively

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**Benefits**

- Identification of appropriate treatment and specific supports
- Help develop risk management plans

**Limitations**

- Cannot predict if someone will commit another offense
- Cannot tell you if someone has committed an offense

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\(^1\)STATIC-99R

\(^2\)Structured Clinical Judgments

\(^3\)SVR-20

\(^4\)ARMIDILLO
new tool specifically designed for people with ID. It includes an assessment of the impact (positive or negative) of the person’s team: a well-informed, well-functioning team can reduce risk, while an uncoordinated, misinformed team may increase risk. While it is a promising new tool, it has not yet received wide spread adoption.

For people with ID, the risk factors are much the same as for people without ID: a sexual interest in children and general criminality are major factors related to recidivism. Certain instances of sex offending behavior in people with ID are a result of counterfeit deviance, a useful and correct argument for limiting punitive measures. However, it is dangerous to discount risk factors because they are linked to disability and thus out of the person’s control. While it is true that many people with ID are more comfortable around people who are younger than they are, it is this very comfort (and the discomfort with same age people) that enhances risk. To minimize risk of sex offending behavior because it is viewed as “out of their control” or “understandable” is a mistake for two reasons. One, risk factors such as poor social skills or attraction to children are risk factors regardless of the reason why they are present. Secondly, to discount the risk factor because it is out of the person’s control will lead to underestimations of risk, re-offending, and harsh consequences for the person with ID. An accurate picture of risk is critical to developing the appropriate level of supports and treatment.

Supports and Treatment

While risk levels may not be altered much by ID, treatment and support should be very different for someone with ID. A significant benefit of a Psychosexual is ability to tailor treatment recommendations to account for ID. It is critical that treatment be both sex offense specific, and be modified in a way that allows for the learning needs of someone with ID. The Good Lives Model of treatment overlaps well with the goals of many positive support plans. The Good Lives Model holds that one needs to pay attention to a variety of life goals rather than simply focusing on reducing problematic thoughts.  

“Counterfeit deviance’...refers to behavior which is undoubtedly deviant but may be precipitated by factors such as lack of sexual knowledge, poor social and heterosocial skills, limited opportunities to establish sexual relationships, and sexual naivety rather than a preference or sexual drive towards inappropriate objects.”

Treatment for sex offending has traditionally been group therapy. For those with ID, group therapy can be difficult—even dangerous—if ID is discounted. It can be beneficial when the group is modified in content and process to accommodate individual needs. Support teams can be a huge benefit in helping people manage their risk. One of the most important aspects is communication among team members. Everyone needs to be informed and clear on their role. If there are restrictions in place through the courts, the person may need assistance in adhering to those requirements. They may need help in getting homework from group done. They may need assistance in modifying their schedule so as to avoid children. All of these areas where a good support team can make the difference between failing in treatment and successfully completing treatment. Support teams can be dangerous when they underestimate someone’s risk or need for treatment.

1 For more information on the Static-99, see their website: http://www.static99.org/. The Static-99R weights age as an additional factor, as there is evidence that older offenders are less likely to reoffend.
4 http://www.armidilo.net/ (“The Assessment of Risk and Manageability of Individuals with Developmental and Intellectual Limitations Who Offend—Sexually [ARMIDIL-O-S] is an instrument designed specifically for use with individuals with a borderline or mild intellectual impairment, with or without learning disabilities, who have offended sexually or have displayed sexually offensive behavior.”)
6 The Good Lives Model, see http://www.goodlivesmodel.com/.
Community support of individuals with ID at risk of aberrant sexual expression challenges support professionals to provide safety to the community as well as the person at risk. Agencies often struggle with ethical considerations and opposition to rights restrictions from advocates. In many cases, the individual has never faced legal sanctions but continued aberrant sexual expression puts them at risk: *early planning and identification of risk can prevent future involvement in the legal system.* Those supporting such individuals must balance the safety of the community as well as the person at risk with respect to individual rights. A safety plan based on offense-specific risk assessment information protects the individual at risk and the community.

The safety plan should include control of social and environmental risk factors that have been determined based on the individual’s history of offending and an offense-specific risk assessment. Access to potential victims must be restricted. This might include restrictions of contact with potential victims, visitors in the home, access to community locations, and other influences established through assessment.

Support providers should be aware of dynamic factors or indicators that the individual is at increased risk of offending. A process of notification of such indicators to a responsible party or treatment coordinator should be established. A change in management and supervision level should be considered when increased risk is observed. Specific responses to crisis indicators that are designed to protect the individual and community might include increased supervision or restrictions, additional treatment interventions, and notification to probation or parole officers, depending upon the specifics of court orders or correctional history.
Safety Plan Example: Home and Community Restrictions

All of the restrictions are believed necessary for safety and to establish clear boundaries:

1. Steve will remain within arm’s reach of support professionals when in the community. If he purposefully avoids community supervision, the outing will be immediately terminated and Steve will return to his residence as discussed below.

2. If Steve fails to walk away from the individual after two verbal prompts, terminate the trip and take Steve directly to his residence (when he meets criteria for “increased risk of engaging in aberrant sexual expression”).

3. Steve will be accompanied by agency support professionals on all community outings except when he is accompanied by family, Care Coordinator, and/or Community Guide.

4. Support professionals will review the Community Rules with Steve prior to every community outing. The rules are on a laminated card. Steve has memorized the rules and will rapidly state them. Ask him to slowly read each rule. After reviewing the rules, ask Steve if he would like to carry the card and honor his choice. These rules expand rules associated with the previous behavior support plan. The rules are as follows:
   - Do not touch other people except handshake with adult
   - Do not go into a kid’s store or a store with a kid’s department
   - Do not talk to children
   - Stay within arm’s length of the support professional
   - Keep hands out of pockets
   - Do not touch myself inappropriately
   - Look at people at head level

   Violation of Rules 1-3 results in immediate termination of the outing. Staff will prompt Steve to follow Rules 4, 5, 6, and/or 7 above. If he continues to be unable to follow those rules (4-7) after one prompt, the outing will be immediately terminated.

5. Steve will not enter any bookstore that includes a Children’s Section.

6. Steve will not enter or remain in a public restroom without staff unless it is designed such that one and only one person can occupy the restroom at a time. If a male staff is not with Steve, he can only use restrooms designed for use by one individual at a time.

7. Steve is restricted from Children’s, Teen’s, Petite, and Jr’s sections of non-book stores. He may not stand near such sections unless making a purchase at an adjacent section.

8. Steve will not be permitted to possess, buy, receive, or obtain by any other means, any magazine or book with child photographs and content.

9. Steve will not be permitted to possess any photographs or sketches that include feet (covered, uncovered, partially covered, in sandals).
10. Steve will be restricted from swimming pools and other swimming areas where children are present. He can swim where attendance is limited to adults.

11. Photographs in Steve’s possession must meet three conditions: (1) be of the entire body, (2) feet are not exposed, and (3) be a photograph of an adult person. Steve has accepted these conditions. These conditions, although restrictive, strive to avoid dissociating the source of Steve’s sexual excitation (i.e., feet) from the entire body and ensure that the photographs do not involve minors.

12. Steve will be restricted from the “recycle bin” and other areas where magazines and books have been discarded. He is not allowed to look through trash and recycle bins for books, magazines, or other items.

13. Steve will not be permitted to purchase, receive, or obtain by any other means any flip-flops. Flip-flops only increase Steve’s obsession with feet and should thus be restricted until it is determined that Steve can demonstrate better control over his sexual behavior in the presence of individuals wearing flip-flops.

14. Steve and his bedroom will be randomly searched once a month. Two support professionals including one supervisory staff will complete the search. Items prohibited as described in this Plan will be confiscated and destroyed unless it is a book that was purchased by Steve. In that case, the agency will attempt to re-sell the book in the agency Book Store. Proceeds from the sale of the book will be given to Steve. Room searches will be completed in Steve’s presence. If he declines to be present during a search, permission for the search will be obtained via telephone from his guardian.

15. Steve is restricted from entering a peer’s bedroom, regardless invitation or permission.

16. Steve’s access to and use of sharp instruments including his safety razor, household cleaning supplies, and other hazardous substances (i.e. after shave/cologne) is restricted. He may use sharp instruments, and household cleaning supplies, and other hazardous substances only when he is supervised. He will be restricted from access and use of such items (that is no access/use with supervision) when he engages in one or more of the following observable behaviors;

- He talks faster or louder than is typical
- He makes statements or threats to break items
- He makes statements or threats to harm himself or others
- He makes confused/delusional statements such as statements that his mother is deceased or his mother is pregnant

When Steve has been restricted from use of sharps/household cleaning supplies under supervision as described above, the restriction will be reduced to use with supervision after he has not exhibited one or more of the above criteria for one hour.
Developing Sex Offender Protocols: One State’s Process

Colleen Mercuri-Johnson, MSW, LISW-S, Butler County Board of Developmental Disabilities, Hamilton, Ohio

The goal when working with individuals who have committed a sexual offense is to prevent future offenses. Educating County Boards of Developmental Disabilities (CBDD) staff—Ohio’s system for managing and distributing I/DD services (or the equivalent state entity)—and an individual’s support staff to recognize early signs of Problematic Sexual behavior (PSB) will lead to more effective prevention of sexual abuse. The Association for the Treatment of Sexual Abusers (ATSA) defines PSB in this context as “sexually offensive conduct that places either the client or others at risk for harm or social prejudice.” Our systems aim to eliminate re-offense through meaningful assessment, education, treatment, and supervision that is comprehensive, efficient, and collaborative.

This article gives an overview of the Sex Offender Protocol developed by the Ohio Department of Developmental Disabilities in August of 2013. This protocol was developed to address the challenges experienced by CBDD and agency providers when working with individuals who have been convicted of a sexual offense, and explains the type of assessments needed when working with this population. The protocol also provides guidelines for case managers/support teams to develop individual services plans (ISP) based on outcome/recommendations of the assessment, including treatment and supervision needs.

Due to the challenges associated with providing effective services for individuals with I/DD who sexually offend, the Protocol encourages collaboration with those who have a connection to the individual, (e.g. probation/parole officer, CBDD, provider agencies, treatment provider, guardian, natural supports, etc.). The value of having diverse perspectives on a team is widely recognized as leading to successful development of an ISP and, in return, the individual’s effective integration into the community. The individuals themselves should have a voice in the development of their ISP and all planning should be person center.

**Assessment:**

Early identification of PSB is a significant factor in sexual abuse prevention. Some type of assessment...
is recommended for all individuals who have displayed PSB. A comprehensive assessment is strongly recommended for those with a significant sexual offense history (e.g. hands on violent contact offenses, offenses involving children, viewing child pornography). The ultimate outcome of any assessment is to provide a comprehensive framework for understanding the individual and their offending behaviors, thereby guiding effective support planning.

The Protocol suggests that CBDDs maintain a list of qualified professionals available to complete a sex offender specific assessment to minimize turnaround time for the assessment. It also suggests that the persons administering the assessments hold an advanced degree in a mental health discipline, hold an independent license or be supervised by an independently licensed person, and have experience in evaluating sexual/violent risk in persons with I/DD. When scheduling the appointment, ask what collateral information the assessor will need in order to complete the assessment (e.g. residential history, social/medical/treatment history, psychological evaluations, current ISP/staffing ratio, behavior support plans, history of legal involvement, etc.). The Protocol does not suggest specific assessment tools to be used. It does encourage communication between the CBDD and the assessor before the assessment takes place to discuss the focus of the assessment and how the recommendations will be used. This discussion will guide the choice of assessment tools and content of assessment summary, thereby increasing the usefulness of the recommendations to the CBDD.

**Service Planning:**

Development and monitoring of an individual’s ISP is a collaborative effort based on a structured reasoning process utilizing the recommendations from the assessment. Elements of the ISP relating to the person’s sexual offense should be reviewed frequently and updated as needed. These elements should stay in place until such a time as the individual has consistently demonstrated their ability to fully manage their behavioral triggers. Observation of their successful management should be over a significant period of time. Any fading of restrictions should be slow and with consensus of their support team. Teams are encouraged to consider the following when developing the ISP:

- Individual’s level of cooperation with services/supports.
- Individual’s capacity for independent living.
- Individual’s legal status e.g. reporting status, probation/parole requirements, etc.
- Impact of mental health and/or I/DD on the individual’s ability to make decisions in their own best interest.
- Degree of assessed risk associated with environment and activity.
- Implications of rights restrictions on the individual’s rights.

Individuals with a sexual offense conviction that otherwise function independently have the right to decline services, including suggested supervision. This is a major challenge for CBDD staff as they work to develop and implement the individual’s ISP. The following are considerations for team discussion when this occurs:

- Use community control via reporting requirements, probation/parole, local police, courts understanding of I/DD supports, etc.
- Mandate compliance with the notice and reporting requirements for individuals convicted of sexual offenses in the state’s Revised Code.
- Disclose risk to neighbors, coworker, etc as warranted (e.g. high risk environments lend to more detailed disclosure vs. low risk environments). Risk environments are identified through a sex offender specific assessment.
- Maximize treatment compliance
- Focus on skill development

For the complete Protocol, including checklists to assist teams in developing ISP and relapse prevention plans, visit [https://sites.google.com/site/doddworkspace/home/tools](https://sites.google.com/site/doddworkspace/home/tools).

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2 The term “person centered” means that the individual with a disability has direct influence in all aspects of planning including, but not limited to, priorities, treatment modality, measurement, and goals.
In the spring semester of 2015, CLASS Inc. and the University of Massachusetts Lowell began a research and community task force collaboration. This includes the oversight of a professor from the Criminology and Justice Studies department at UMASS Lowell and a UMASS PhD candidate fellow.

The goal of this collaboration is to identify the commonalities of individuals’ forensic experiences as well as to pursue collaborations with local mental health and criminal justice systems. This project will also provide additional feedback and data to further the evolution of the SES Best Practices treatment model. The program best practices are built on three core components: assessment, treatment, and therapeutic work. The SES program has partnered with several clinicians with a wide spectrum of disciplines. These clinicians conduct weekly therapy sessions within the program facility and engage in consistent communication with the treatment team which produces effective, person-centered treatment.

The Specialized Employment Services program (SES) provides individuals with sex offending behaviors and developmental, cognitive, and/or mental health issues with support, treatment, and work opportunities. The SES program supports individuals with developmental, cognitive, mental health, and/or sex offender registry board (SORB) related, high risk issues.

The SES program has a treatment and environmental model that allows for assessing individuals proactively and safely during the initial transition into the program. When new individuals arrive at the program they start in the “intake homebase”. This room is populated with new individuals (with a few veteran participants selectively added to the milieu who can provide peer advice, feedback, and modeling). This allows us to gain a sense of the individual’s unique strengths, weaknesses, and behavioral presentations. Individuals spend an
average of three to five months in this room before they are fully integrated into the program.

This room, noted in yellow, is located in an area discreetly separated from the rest of the program while still remaining part of the overall program space. This environmental adjustment is particularly effective for identifying and monitoring sexual behaviors safely in a smaller controlled space. In collaboration with the program clinical consultant and therapist involved, each member of the program treatment team (director, manager, behavioral specialist, clinical coordinator, intake room staff) observe and monitor these first few months to develop a person-centered treatment model that may include elements of token economies, level systems, restrictive practices, functional communication techniques, and DBT (dialectical behavior therapy)\(^3\) coping skill techniques.

The employment component of the program’s best practices consists of the therapeutic production work choices available. The majority of individuals in the SES program have historically struggled to obtain (and/or maintain) gainful employment in the community. The SES program allows for safe engagement in work as a therapeutic tool. While the subject of sheltered work is a complex issue, individuals who present potentially unsafe sexual behaviors while in the community are still offered the opportunity to earn a paycheck in a contained, supervised facility. It is referred to as “therapeutic work” because the experience of engaging in employment opportunities and earning a paycheck is naturally reinforcing for the majority of individuals in the program. This reinforcement consistently leads to increases in socially adaptive behaviors and corresponding decreases of socially maladaptive behaviors. The model also includes an off-site work opportunity (in close proximity to the program facility) which involves cleaning up work areas and common areas. These highly coveted positions allow for observation and evaluation of the individual in a community environment, and represent a first step in transition to the least restrictive environment.

Our SES program has evolved over the course of the past 26 years and we have learned invaluable lessons as experienced providers. As we move forward with operational practices that involve specialized research and intensive community task force engagement, we are committed to the development of new programs that enhance our ability to provide state of the art services to those in need.

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1. Ongoing collaboration as of the publication of this paper. For more information, see [http://www.classinc.org/specialized-employment-services.html](http://www.classinc.org/specialized-employment-services.html).
2. Forensic Psychologists, PhDs, Board Certified Behavioral Analysts, Licensed Mental Health Counselors, Licensed Marriage and Family Therapists, and Licensed Independent Clinical Social Workers.
3. See [https://www.nami.org/Learn-More/Treatment/Psychotherapy](https://www.nami.org/Learn-More/Treatment/Psychotherapy) (“DBT is heavily based on [cognitive behavioral therapy] with one big exception: it emphasizes validation, or accepting uncomfortable thoughts, feelings, and behaviors instead of struggling with them. By having an individual come to terms with the troubling thoughts, emotions, or behaviors that they struggle with, change no longer appears impossible and they can work with their therapist to create a gradual plan for recovery.”).
“Some of my most heartbreaking, some of my most frustrating, some of my most gratifying experiences as a criminal defense lawyer have been working with families of persons with intellectual and developmental disabilities who are charged with sexually-oriented offenses. I have taken some of those experiences and written this guide so you can provide your loved one’s lawyer with the most effective assistance possible.”

--Elizabeth Kelley

Provide the Lawyer with All Necessary Documentation

Records, names of agencies where records can be obtained, and contact information for sources are vital. Include records from:
- School
- Employment
- Medical Providers
- Housing

Sign needed releases promptly. Lawyers cannot access records without a HIPPA waiver. Provide as much information as possible and let the lawyer decide what is important.

Honor Attorney-Client Privilege and Confidentiality

You are not the client. Without a release, lawyers can only share public, non-privileged information such as court dates and how particular proceedings work with you and your family.

Designate a point person if there are multiple interested family members. This is the one person who will communicate with the attorney, simplifying the process.

The Media

Do not talk to the media without consulting the lawyer, and if you do, have a lawyer present.

Although your loved one’s case may be outrageous, short of extraordinary circumstances, the media will not care. If the media does cover a case, it may not be sympathetic—particularly if your loved one is charged with a sexually oriented offense.

Some jurisdictions have rules regarding a lawyer’s ability to interact with press, so ask your lawyer. Not following the lawyer’s advice may compel him or her to withdraw from the case.

Competency and “Not Guilty by Reason of Insanity”

Understand that the standard for incompetency to proceed is high in most jurisdictions. Even if your loved one has an intellectual or developmental disability (I/DD) and cannot understand the complexity of the court system, they may be found competent.
If you believe your loved one’s I/DD prevents them from understanding what they are accused of doing, that, roughly speaking, falls into the definition of not guilty by reason of insanity. The standard is very high and requires evaluations by psychologists or psychiatrists.

Depending on the nature of the charges, conviction may carry a mandatory minimum sentence that a judge cannot decrease even if he or she may want to.

**Remember:**

**Your Lawyer is a Lawyer, and is Largely Constrained by the Legal System**

Often, by the time a family meets with the defense attorney, they have endured years—possibly decades—of misunderstanding from neighbors, schools, employers, and others who do not understand the nature of their loved one’s disability and were unwilling to make accommodations. Do not make the defense attorney the focus of anger and resentment. The criminal charges may be unfair, but if there is an indictment, the lawyer must deal with the facts and control collateral damage. Arm the lawyer with much-needed facts and insight.

If your attorney is unfamiliar with issues related to disability, contact NCCJD (NCCJDinfo@TheArc.org) and your state’s Protection and Advocacy Organization for resources and materials that may help.

Sexually oriented offenses are often accompanied by alleged victims’ families putting pressure on the prosecutor or wanting to testify to graphic and compelling evidence. The community outrage over sexually oriented offenses, is often so profound that no judge or prosecutor wants to appear soft—particularly if there is media coverage. A plea may be a way to minimize these huge trial risks.

**Plea Deals**

If your lawyer discusses a plea, it doesn’t mean he or she doesn’t believe your loved one. A lawyer is ethically required to convey any plea offer to a client. When your lawyer suggests a plea be accepted, it is likely based on his or her (often disappointing) previous experiences and knowledge of the realities of the system. If possible, cover the plea deal point by point with the lawyer and explain which points will be difficult to comply with and why—take particular note of the requirements surrounding registration as a sex offender.

**Remember: A family can be a valuable resource—be the helpful family!**

The content of this page does not constitute legal advice. All content is provided “as is” for informational purposes only, and NCCJD makes no representations as to the accuracy, completeness, currentness or suitability of information on this page.

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## A Call to Action for Criminal Justice Professionals

People with disabilities are particularly vulnerable to injustices in the criminal justice system. Rules and laws that work for the majority of the population blatantly fail people with I/DD, creating a new kind of victim. Criminal justice professionals must:

| Proactively examine fact patterns of sex offense cases involving people with I/DD. | • Watch for instances where the person was victimized or manipulated. |
| Strongly consider the role disability plays in these types of offenses | • Did they understand the consequences of their actions? |
| Find alternatives to incarceration and sex offender registries for people with I/DD when appropriate. | • Is the person used to a highly supervised setting? |
| • Have they ever received education about the offense they committed? | • Create a community safety plan |
| • If you observe potentially problematic behavior, address it early | • Look for employment programs like Class, Inc |
| • Do not infantilize the person and assume behavior is harmless. |

- Learn more about sex offenders with I/DD by watching [free archived webinars](https://www.atsa.com/pdfs/ATSA_IDPSB_packet.pdf) 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 sex offenders with I/DD and begin creating possible solutions.
- Use NCCJD’s information and referral service, and refer others.
- Refer to NCCJD’s state-by-state map or look up resources by profession (law enforcement, victim service provider or legal professionals).
- Suggest names of expert witnesses or model legislation for NCCJD’s database (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 people with disabilities, contact NCCJD at [www.thearc.org/NCCJD/about/request-assistance](http://www.thearc.org/NCCJD/about/request-assistance).

**Resources**

*For additional resources on the topic, please visit:*

- [www.smart.gov](http://www.smart.gov)
- [www.atsa.com](http://www.atsa.com)