

Individuals with Intellectual and Developmental Disabilities
Who Become Involved in the Criminal Justice System:

A Guide For Attorneys

*This guide is brought to you
as a public service by
The Louisiana Disability and Legal Resources Project*



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About The Arc of Louisiana

The Arc of Louisiana is the largest non-profit advocacy organization for people with intellectual and developmental disabilities and their families in Louisiana. The Arc of Louisiana is committed to enhancing the quality of life of children and adults with intellectual and developmental disabilities, and their families, through advocacy, empowerment, education and prevention.

Started in 1953 by a parent of a child with developmental disabilities, the organization remains a parent-directed membership organization, with a firm belief in the effectiveness of grassroots advocacy. The Arc of Louisiana is affiliated with The Arc of the United States, which has more than 700 chapters, and 105,000 members nationwide, and community-based services are available statewide through a strong network of local county chapters.

About the Criminal Justice Advocacy Program

The Criminal Justice Advocacy Program (CJAP) is one of only a few programs nationwide, that seeks to organize services around an individual as an alternative to incarceration for defendants with an intellectual or developmental disability. Operating under The Arc of New Jersey, the mission is to promote the welfare of people with intellectual and developmental disabilities. CJAP is a clearinghouse for information about offenders with intellectual and developmental disabilities (I/DD), and serves as a liaison between the criminal justice and human services systems.

About the Louisiana Disability and Legal Resources Project

The Louisiana Disability and Legal Resources (LDLR.org) is an [online resource](#) for information on legal and disability issues, resources, and terminology. The LDLR contains information for legal professionals who need information on navigating the disability services system, and for individuals and families who need information on navigating the legal system. LDLR.org is a joint effort of The Arc of Louisiana and the Independent Living Research Utilization (ILRU) and is made possible through a grant (H133A110027) from the National Institute on Disability and Rehabilitation (NIDRR) and the Southwest ADA Center.

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I. Introduction

This guide is presented as a public service of the Criminal Justice Advocacy Program of The Arc of New Jersey, and the Louisiana Disability and Legal Resources project of The Arc of Louisiana. It provides a general introduction to relevant issues and concerns for this population. It is designed to assist attorneys in understanding the possible presence of an intellectual and/or developmental disability (I/DD) in someone involved in the criminal justice system. This information is intended to help attorneys make an initial identification of someone who has I/DD and become aware of what criminal justice and community resources are available to help them. It is **not** intended to be a comprehensive treatise on all relevant legal or psychological issues, nor is it intended to provide or substitute for legal advice or assistance.

Individuals with I/DD live in the community. They may not have family or community support to assist them and their circumstances are often misunderstood. Their susceptibility to becoming involved in the criminal justice system will continue as suspects and victims. It is incumbent upon those working within the system to learn to identify these individuals and work to address their needs.

Defendants with I/DD often display poor judgment and do not fully understand the significance or the consequences of their actions. In an effort to be socially accepted, they may unknowingly involve themselves in criminal behavior. Moreover, because of their heightened suggestibility, they are easily led into criminal activity. They may be bullied or intimidated as well as seduced into participating in criminal activity. Ostensibly, their limitations carry over into the legal system because defendants with I/DD attempt to mask their disability (often from their own attorneys) and may appear to acquiesce despite not fully understanding the criminal justice process and the ramifications of their choices.

Some research suggests at least 9% of offenders currently in prison have an intellectual or developmental disability. Other research indicates that as much as 30 to 40% of the inmate population has an intellectual or developmental disability, despite the fact that there is no evidence to suggest that there is any causal link between having an I/DD and committing crimes. People with I/DD are also more likely than the general population to be arrested, convicted, sentenced to prison, and victimized while incarcerated. They are also less likely to be placed on probation or awarded parole and generally tend to serve longer sentences. In addition, offenders may have a “dual diagnosis” of a developmental disability and a mental illness, complicating efforts to determine their understanding of their offense and the resulting prosecution. An individual may also have developed a dependence on drugs or alcohol, further complicating identification of diagnoses and effective interventions.

Moreover, be aware that individuals with intellectual and/or developmental disabilities (I/DD), are statistically **twice as likely** to be victims of crime as persons without disabilities. It is important to recognize the presence of these individuals within the criminal justice system. The issues they face are exemplified by the current statistics outlined below.

- **In 2010, the age-adjusted violent victimization rate for persons with disabilities was almost twice the rate among persons without disabilities.** Erika Harrell, Ph.D., BJS Statistician (2011). Crime Against Persons with Disabilities, 2008-2010 - Statistical Tables. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Washington, DC
- **2010 police records indicate that only 41% of violent victimizations of persons with disabilities were reported to the police compared to 53% among persons without disabilities.** Erika Harrell, Ph.D., BJS

Statistician (2011). Crime Against Persons with Disabilities, 2008-2010 - Statistical Tables. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Washington, DC

- **In 2008, the violent victimization rate among persons with disabilities between the ages of 12 and 15 were three times the rate among persons of the same age without disabilities.** Erika Harrell, Ph.D., BJS Statistician (2011). Crime Against Persons with Disabilities, 2008-2010 - Statistical Tables. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Washington, DC.
- **More than 90% of individuals with intellectual disabilities will experience sexual victimization at some point in their life.** Valenti-Heim, D., Schwartz, L. (1995). The Sexual Abuse Interview for Those with Developmental Disabilities. James Stanfield Company. Santa Barbara: California.
- **49% of people with developmental disabilities who are victims of sexual assault will experience 10 or more abusive incidents.** Valenti-Heim, D., Schwartz, L. (1995). The Sexual Abuse Interview for Those with Developmental Disabilities. James Stanfield Company. Santa Barbara: California.

A. A Note about the Language: Prohibition on Use of the “R” Word

Although *mental retardation* has been used as a diagnostic label in the past, the term is considered to be hurtful and stigmatizing. In recognition of this, the term *intellectual disability* is now being used to refer to the condition historically called *mental retardation*. State and federal agencies and national organizations are removing the older term from their names, and the term *intellectual disability* is now being used for research and publication.

Therefore, in general conversation, use of the term is not acceptable. In keeping with the requests of men and women with intellectual and developmental disabilities, and in reflection of respectful language, attorneys should use the term *intellectual disability* whenever possible when communicating with persons and family members of persons with intellectual disabilities.

B. “Person First” Language

“Person First” language means that the term refers to the person first and not the disability.

What Do You Call People with Disabilities?

Men, women, boys, girls, students, mom, Sue’s brother, Mr. Smith, Rosita, a neighbor, employer, coworker, customer, chef, teacher, scientist, athlete, adult, children, tourists, retirees, actors, comedians, musicians, blondes, brunettes, SCUBA divers, computer operators, individuals, members, leaders, people, voters, friends, or any other word you would use for a person.

Person First Language recognizes that individuals with disabilities are **first and foremost** people. It emphasizes each person’s value, individuality, dignity, and capabilities. The following examples provide guidance on what terms to use and which ones are inappropriate when talking or writing about people with disabilities.

Person First Language	Labels that Stereotype and Devalue
<ul style="list-style-type: none"> • People/individuals with disabilities An adult who has a disability A child with a disability A person 	<ul style="list-style-type: none"> • The handicapped The disabled
<ul style="list-style-type: none"> • People/individuals without disabilities 	<ul style="list-style-type: none"> • Normal People/healthy individuals
<ul style="list-style-type: none"> • People with intellectual and developmental disabilities He/she has a cognitive impairment A person who has Down Syndrome 	<ul style="list-style-type: none"> • The mentally retarded; retarded people He/she is retarded; the retarded Moron, idiot, imbecile He/she’s got Downs; a Mongoloid; Mongol
<ul style="list-style-type: none"> • A person who has Autism 	<ul style="list-style-type: none"> • Autistic
<ul style="list-style-type: none"> • People with mental illness A person who has an emotional disability With a psychiatric illness/disability 	<ul style="list-style-type: none"> • The mentally ill; the emotionally disturbed Is insane; crazy; demented; psycho; a maniac; lunatic
<ul style="list-style-type: none"> • A person who has a learning disability 	<ul style="list-style-type: none"> • He/she is learning disabled
<ul style="list-style-type: none"> • A person who is deaf He/she has a hearing impairment/loss A man/woman who is hard of hearing 	<ul style="list-style-type: none"> • The deaf
<ul style="list-style-type: none"> • A person who is deaf and cannot speak Who has a speech disorder Uses a communication device Uses synthetic speech 	<ul style="list-style-type: none"> • Is deaf and dumb Is mute

II. What is a Developmental Disability?

A. The term **Developmental Disability** is an umbrella term used to characterize **any** neurological impairment which may affect the “executive function” of the brain. Louisiana law states that a **developmental disability** is a condition that:

- Is attributable to an intellectual or physical impairment;
- Is manifested before the age of 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency;
- Is not attributed solely to mental illness;
- Reflects the person’s need for a combination of special interdisciplinary or generic care, treatment or other services, which are individually planned and lifelong or of extended duration.

See: **RS 28:51.2 (12)**

An individual with a developmental disability may have an intellectual disability or may exhibit difficulties with social interaction or comprehending social cues while testing with an average or high IQ. The following is a list of common, though not complete, diagnoses of intellectual or developmental disabilities:

- | | |
|-----------------------------|------------------------------------|
| • Autism Spectrum Disorders | • Fetal Alcohol Spectrum Disorders |
| • Cerebral Palsy | • Prader Willi Syndrome |
| • Down syndrome | • Spina Bifida |
| • Epilepsy | • Traumatic Brain Injury |
| | • Williams Syndrome |

The terms intellectual disability and developmental disability are not interchangeable. Autism Spectrum Disorders, Cerebral Palsy and Epilepsy are examples of kinds of developmental disabilities that **are NOT considered intellectual disabilities**. An individual could be diagnosed with one of these disabilities but still demonstrate an average or above average IQ.

- **Autism Spectrum Disorder** is a lifelong developmental disability which is recognized and diagnosed before 3 years of age. Contributory characteristics include: Special obsessions, interpersonal naïveté, lack of empathy for others, and inability to “read” social cues.
- **Cerebral Palsy** is a condition caused by damage to the brain during pregnancy, labor, or shortly after birth. It is a brain disorder of movement or posture.
- **Epilepsy** is a chronic disorder to the brain, which is characterized by the tendency to have recurrent seizures, without cognitive impairment. Seizures are sudden, uncontrolled episodes of excessive electrical charges of the brain cells.

B. An **Intellectual Disability** is a developmental disability that generally refers to substantial limitations in a person’s present levels of functioning. These limitations may be manifested by:

- Delayed intellectual growth;
- Inappropriate or immature reactions to one's environment; and
- Below average performance in academic, psychological, physical, linguistic and social domains.

It is characterized by sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

C. How to Determine a Developmental Disability

To recognize the presence of a developmental disability, there are many factors to consider. First, it is important to obtain documentation that provides a **Full Scale IQ** (FSIQ). An FSIQ will give some indication whether or not an intellectual or developmental disability is present. A list of suggested documents can be found on **Page 14**. The individuals' adaptive behavior is an important consideration. Adaptive behavior refers to how they care for themselves. These factors alone will not fully prove an intellectual or developmental disability (I/DD), but it will allow you to explore the possibility that one exists.

1. Understanding Intelligence Quotient (IQ) Tests

The **American Association on Intellectual and Developmental Disabilities (AAIDD)** (www.aaid.org) defines intelligence in its comprehensive reference book on intellectual disability. This text defines intelligence as "a general mental ability that includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly and learning from experience. The assessment of intellectual functioning is one element of diagnosing intellectual disabilities".

A score on an IQ test is an essential component of assessing intellectual functioning, for purposes of a determination of an intellectual disability, but should not be used in isolation. Generally, a full-scale IQ of 70 or below satisfies the requirement of "sub-average" intellectual functioning. The majority of people in the US score from 80-120 on IQ tests, with an IQ of 100 considered average. Scoring below 70 on an IQ test places a person in the bottom 2% of the American population.

IQ tests **are not** considered to be absolutely accurate. A "Standard Error of Measurement" (SEM) is taken into account when interpreting a score. Generally speaking, the conventional SEM is a range of plus or minus 5 points. This means that a score of up to 75 points may still make a person eligible for a determination of intellectual disability. Accordingly, a person's IQ is not represented by a specific number; rather, scientists profess to be 95.5% confident that his/her IQ falls within a range of plus or minus 5 points on either side of the "full scale" test score.

Approximately 89% of people with an intellectual disability have a MILD intellectual disability and score from 52-70 on IQ tests. This is generally where a criminal defendant with an intellectual disability will score.

Individuals who fall within the definition of developmental disabilities may apply for services from the Office for Citizens with Developmental Disabilities (OCDD). The OCDD is a state agency that is part of the Department of Health and Hospitals. Although a disability must manifest before age 22, a person can apply to OCDD for services at any age. There is no time or age limit.

Some developmental disabilities do not affect intellect. An IQ test **will not** tell you if a person has a developmental disability such as **Autism Spectrum Disorder**, **Cerebral Palsy** or **Epilepsy** and other tests need to be performed to determine if the individual has substantial functional limitations.

2. Measuring Adaptive Behavior

Adaptive behavior describes the way that people care for themselves and relate to others in the course of daily living. The acquisition of adaptive skills for most people is continuous and occurs naturally, but can be difficult for persons living with an intellectual or developmental disability (I/DD).

The AAIDD defines adaptive behavior as “the collection of conceptual, social and practical skills that have been learned by people in order to function in their everyday lives”. Representative skills for each area include the following:

- **Conceptual skills** – language, reading and writing, money concepts, and self-direction.
- **Social skills** – interpersonal skills, responsibility, self-esteem, gullibility, naïveté, ability to follow rules, obey laws and avoid victimization.
- **Practical skills** – activities of daily living, occupational skills, and the maintenance of a safe environment.

Persons with an intellectual or developmental disability (I/DD) rarely have deficits in each area of adaptive behavior – in fact, limitations and strengths can often be found within the same domain, just like people without I/DD.

Adaptive behavior and intelligence are related and complementary concepts, but they are not the same. While adaptive behavior and intelligence share much in common, they differ in several ways.

- Adaptive behavior measures focus on a person’s usual actions, whereas intelligence tests obtain information about maximal performance.
- Adaptive behavior measures examine how people care for themselves and relate to others as part of everyday living, whereas intelligence tests focus only on higher-order reasoning abilities.
- Intelligence tests are given under controlled conditions, while information about adaptive behavior is usually obtained through interviews with third parties.

A number of standardized instruments exist for measuring adaptive behavior. If an individual was not assessed before turning 22 years old, an assessment will also be based on information from other sources, including interviews with people who have known that individual over the course of the individual’s life.

A structured interview with the defendant and family members or friends, combined with a review of pre-incarceration social history and institutional adjustment, can provide a measure of adaptive behavior.

D. Misconceptions to Avoid When Working with Persons with I/DD

- ***All individuals with I/DD are alike.*** People with I/DD, like all people, are complex human beings with unique and individualized strengths and limitations.
- ***Individuals with I/DD are more likely to commit crimes.*** Though it is generally true that individuals with I/DD are over-represented in the criminal justice system, this is due to a variety of factors unrelated to propensity to commit crime.
- ***I/DD does not significantly impact a person’s life.*** Even “mild” I/DD constitutes a substantial disability. An IQ in the 60 to 70 range is approximately the scholastic equivalent to the third grade. In fact, the AAIDD discarded the “mild-moderate-severe-profound” classification system because of its concern that “mild

intellectual disability” was incorrectly viewed as something less than a condition that represents a considerable disadvantage.

- ***All Individuals with I/DD “look” a certain way.*** Persons with mild I/DD often go undetected in screening and processing after arrest. Many people with I/DD cannot be identified by their physical appearance alone.
- ***You can tell if someone is a person with I/DD by observing that person’s ability to do certain things.*** For example, if a person can plan an activity or read, that person must not have an I/DD. It is generally a person’s difficulty with a task that identifies someone as a person with an I/DD, not the person’s ability to do certain things. Not all individuals with I/DD will display each of the characteristics associated with I/DD. Individuals with I/DD, like everyone, will have strengths as well as weaknesses.
- ***I/DD is NOT determined simply by looking at scores on IQ tests.*** IQ tests are but one of the measures used to reach a determination of I/DD. Measurement of adaptive behavior and age of onset are also considered.

It is important for us to consider that our own biases, as well as those of the police, court officials, and prosecution can play a role in the way that persons with I/DD are treated in the criminal justice system.

Ruth Luckasson, J.D., an authority on the barriers that individuals with I/DD experience, created a list of the “reasons” that she had heard prosecutors, defense attorneys, and judges give to support their claim that a defendant did not have I/DD.

“He can’t possibly have an intellectual or developmental disability (I/DD) because...

- He doesn’t drool.
- You can see how normal he looks.
- He’s so big.
- He played cards with the police officers who brought him over in the van, and one day he won.
- He can write.
- He can draw.
- No one knows it.
- I asked him and he said he’s not, and he started crying.
- I talked to his family and they all denied it.
- I can talk to him easily.
- He does everything I want him to.
- He tried to cover up his involvement in the crime.
- I know he’s mentally ill.
- He talks so much.
- I saw in his file that 10 years ago someone gave him an unidentified IQ test, and he had an IQ of 86.
- He can drive a car.
- We know he’s competent to stand trial.
- He knows right from wrong.
- He’s so street smart.
- He can operate a forklift”.

When representing an individual that may have an I/DD, it is important to guard against biases and misconceptions – in our opposing counsel, the courts and in ourselves. Similarly, when working with victims of crime who have an I/DD, as well as witnesses and parties in civil matters, it is important to understand an individual’s ability to comprehend and look for effective ways to communicate.

III. Does this Individual have an Intellectual or Developmental Disability (I/DD)?

Early identification of individuals who may have intellectual and/or developmental disabilities is critical to providing appropriate treatment within the criminal justice system. In order to receive services from the Office for Citizens with Developmental Disabilities (OCDD), a person must be determined eligible.

In order to determine eligibility, OCDD requires evaluations and school records along with a completed application. Determining whether a person has an I/DD requires comprehensive tests by qualified professionals. For instance, a psychological evaluation would determine a current IQ level of the individual. **89%** of people with an intellectual disability have a MILD disability and score within the range of 52-70 on IQ tests. This is where the majority of individuals with I/DD will score and their disability is likely to go unidentified.

Noting certain deficits can help you make a preliminary identification.

Individuals with I/DD may....

- Have limited vocabulary.
- Have difficulty comprehending and responding to questions.
- Copy or "parrot" their answers.
- Be easily influenced by other individuals.
- Have an eagerness to please authority figures, overly compliant.
- NOT understand certain social cues or concepts. Common instances are:
 - Personal Space; Facial Expressions; Verbal and non-verbal communication.
 - Being teased or bullied by others and still believe that bully is their friend.
- Act immature for their age, childlike.
- Have poor impulse control.
- Be easily diverted.
- Have uncoordinated or poor motor skills.
- Exhibit inappropriate facial expressions in certain circumstances.
- Rarely make eye contact.

A. Difficulties for a Person with an Intellectual or Developmental Disability

Individuals with an intellectual disability **may** have difficulties in the following areas:

- Reading
- Writing (does not include signing name)
- Telling time easily
- Obtaining a Driver's License
- Recognizing coins and making change
- Giving coherent directions

Note: A person may not be literate, but may still be able to sign his/her name. Keep in mind too that it is possible to obtain a valid driver's license and still meet the criteria for an I/DD.

B. Indicators that would NOT alone determine a Developmental Disability

- Appearance
- Speech
- Ability to sign name

C. Characteristics that may identify a person with a Developmental Disability

- Eccentric speech patterns
- Avoids eye contact
- Difficulty modulating voice volume and pitch
- Rocking back and forth, hand flapping, humming, pacing, repeating words or phrases or other forms of “self-stimulating” behavior
- Inappropriate or out of place facial expressions or behaviors, like laughing at the wrong time
- Exhibiting avoidance of touch
- Extreme or unusual response to light, sound or other sensory input
- Demonstrating apparent insensitivity or high tolerance for pain or discomfort from heat or cold
- Difficulty recognizing voice cues from other people
- Difficulty recognizing faces
- Strong food preferences or aversions

D. Documents that may confirm a Developmental Disability

Provided is a list of documents that could demonstrate a presence of an intellectual or developmental disability.

- Psychological evaluation or other assessments which reference a neurological impairment.
- School Records such as an IEP or Individualized Education Plan (special education classes or may have participated in therapies such as occupational, physical, or speech).
- Lack of work history (workshops, occupational centers, never held a steady job).
- Receives Social Security Income (SSI) or Social Security Disability Income (SSDI) to support himself, or is supported fully by family.

Remember: In order to obtain necessary documentation you will need to have the person sign a release of medical, mental health and/or education records. See HIPAA, The Health Insurance Portability and Accountability Act of 1996, 45 CFR 160 et seq. If the individual has a **guardian**, you will need the signature of the guardian.

IV. Developmental Disability vs. Mental Illness

A. Distinguishing between a Developmental Disability and a Mental Illness

The table below provides examples of how a developmental disability and a mental illness differ.

Developmental/Intellectual Disability	Mental Illness
<ul style="list-style-type: none">• Intellectual Disability refers to below average abilities to learn and process information.	<ul style="list-style-type: none">• Mental Illness refers to a person's thought processes, moods, emotions.
<ul style="list-style-type: none">• Developmental Disability generally occurs before a person reaches adulthood.	<ul style="list-style-type: none">• Mental Illness can occur at any time in a person's life.
<ul style="list-style-type: none">• Intellectual Disability refers to a below average intellectual functioning (IQ).	<ul style="list-style-type: none">• Mental Illness has nothing to do with IQ.
<ul style="list-style-type: none">• Developmental Disability is lifelong and does not involve restoration (i.e., there is no cure).	<ul style="list-style-type: none">• Mental Illness may be temporary, cyclic or episodic, and may be restorable.
<ul style="list-style-type: none">• Developmental Disability services involve training and education by psychologists.	<ul style="list-style-type: none">• Mental Illness services involve therapy and medication by psychiatrists.
<ul style="list-style-type: none">• Developmental Disability is NOT an illness and should not be treated the same as Mental Illness	<ul style="list-style-type: none">• A diagnosis of Paranoid Schizophrenia, Personality Disorder and Depression are indicators of Mental Illness.
<ul style="list-style-type: none">• Individual's behavior is consistent with their level of cognitive or executive functioning.	<ul style="list-style-type: none">• Individual's behavior may be irrational and change often.

Though a developmental disability and mental illness are not the same, you may find that you are working with an individual who has both an intellectual or developmental impairment and also has a mental illness. This is referred to as a “**Dual Diagnosis**” and it is important to ascertain whether both problems are manifested, since one may “mask” the other. (The National Association for the Dually Diagnosed, NADD, is a not-for-profit membership association established for professionals, care providers and families to promote understanding of and services for individuals who have both a developmental disability and mental health needs. For additional information on the NADD visit their website at www.thenadd.org.)

In addition, you may be working with a person who also has an alcohol or drug abuse problem, which raises additional issues and needs to be addressed with different services and programs. Addressing a drug or alcohol related concern may be necessary before the underlying intellectual or developmental disability can be addressed.

V. Taking Steps with an I/DD Client

A. What to do if you believe a Client has I/DD

If you suspect an individual may have an intellectual or developmental disability (I/DD) that you need to investigate further, this discovery may have implications for the outcome of the case. If an individual has been evaluated and classified in school, you should obtain these records.

There are a few questions you can ask yourself about the individual to investigate the possibility of an I/DD.

- Was the person classified in school for **special education**?
- Has the person ever held a **steady job**?
- Does the person have a **driver's license**?
- How does the person **support himself/herself financially**?
- Does the person receive **financial assistance** such as Social Security Income?
- Does the person **appear to understand** the questions being asked?
- Does the person **respond** to questions **without unnecessary delay**?
- Does the person have an **eagerness to please others**?
- Can the person **explain his/her actions in his/her own words**?

Due to the stigma associated with having an intellectual or developmental disability (I/DD), many individuals may try to hide their disability. Building a rapport with the individual before asking personal questions will improve your communication. If possible, speak to family members and significant others who will be able to provide pertinent information. See **Page 19** for tips on communicating.

B. Collateral Consequences of Conviction

Criminal Convictions can result in the loss of services and/or benefits that the individual with I/DD was receiving as a result of their disability:

- Certain convictions may impact the ability to obtain necessary Social Services such as Section 8 Housing Vouchers and General Assistance. The Quality Housing and Work Responsibility Act (QHWRA) among other statutes provides authority for screening and denial of Federally-assisted housing to individuals and families with specific types of criminal activities in their history, such as illegal drug use and some sex offenses. See Final Rule, H-2002-22 (HUD), October 29, 2002. Conviction for sex offenses requiring Megan's Law registration or parole supervision for life may limit availability of public housing options and result in homelessness. See Notice, H 2009-11 (HUD), September 9, 2009. To learn more about HUD housing visit their website at www.hud.gov.
- Many individuals with I/DD rely on social security benefits to support themselves as job options are often limited. Upon incarceration, Social Security Income (SSI) and Social Security Disability Income (SSDI) benefits are suspended. Incarceration over one year will require the person to file a new application. If

incarceration is less than one year, SSI/SSDI can be restarted. Individuals who have had their SSI/SSDI suspended will need to contact their local Social Security office the month following their release from incarceration. Without SSI/SSDI, an individual will not be Medicaid eligible until the benefits are restarted. Medicaid ineligibility will, at the present time, bar any person from being eligible for services from the Office for Citizens with Developmental Disabilities (OCDD). To learn more about Social Security visit their website at www.socialsecurity.gov.

C. Additional Considerations when Working with an Individual with I/DD

It is important to discuss and review court room etiquette with the individual. Keep in mind involvement in the criminal justice system may be a new experience and can be overwhelming for an individual with an intellectual or developmental disability.

- Discuss carefully and in detail appropriate attire and behavior in the Court Room. Individuals with I/DD may be able to dress themselves but will not understand what constitutes appropriate attire and will need to be prompted each time. Some individuals with I/DD engage in obsessive behaviors such as rocking and flapping and will need to be prompted each time to control the behavior.
- Convey times and other organizational information each time it is needed. Use a calendar and other visual aids to ensure that the individual understands time and place.
- Provide an opportunity for the individual to see the Court Room and understand where each person will sit. Ensure that they understand the concept of an open courtroom, which may be crowded and noisy.

VI. The Top Ten Things to Understand when you Work with an Individual with I/DD

- 1. He/She May Try to “Mask” The Disability:** As a result, you may have difficulty identifying a person with an intellectual disability. If you suspect a person has an intellectual disability, investigate further. Do not rely solely on the individual’s assurance to the contrary. See **Page 12** for a list of documents that may confirm an intellectual or developmental disability (I/DD).
- 2. Individuals With Intellectual Disabilities Are Vulnerable At Every Stage In The Criminal Justice System:** This means that it is particularly important to consider this individual’s disability at each point of the individual’s contact with the system, from his/her ability to understand **Miranda** warnings to his/her competence to stand trial. You should be familiar with the unique characteristics that some persons with intellectual disabilities share, which increase the potential for an inequitable outcome.
- 3. If You Suspect an Individual Is Incompetent, Seek an Evaluation:** An individual who is incompetent may not be able to make informed decisions about fundamental issues, such as whether or not to enter into a plea agreement, or, instead, proceed to trial, so a competency evaluation may be needed.
- 4. Find The Right Expert(s):** It is important that you find someone who has experience in working with an individual with I/DD. Not all psychologists and psychiatrists have training or experience working with this population. You should not assume that someone who is qualified to work with individuals who have a mental illness is also qualified to work with an individual with an I/DD.
- 5. Remember That Diagnosis Involves More Than Just A Low Score On An IQ Test:** Determining whether a person has an intellectual disability has three components: a score on an IQ test that is 70 or below (taking a standard error of measurement into account), deficits in adaptive behavior, and manifestation during the developmental period. Do not focus solely on IQ scores when you are attempting to determine whether an individual may have an intellectual disability. Keep in mind that individuals with IQs above 70 may nonetheless have deficits. See **Page 8** for information on IQ tests.
- 6. Consider Mitigation And Education:** Mental conditions that raise serious issues about an individual’s culpability, without justifying or excusing the crime, can be powerful mitigation evidence. Take the opportunity to educate the Court about intellectual and developmental disabilities and how such disabilities can adversely impact upon someone’s ability to act appropriately and understand the ramifications of her or his actions.
- 7. Overcome Your Own Prejudices:** There are many stereotypes surrounding intellectual and developmental disabilities that can be harmful to an individual with I/DD. It is important for you to examine your own misconceptions. Representing a person with an intellectual disability is not only an opportunity to help the person you represent, but an opportunity for you to educate the criminal justice professional community about intellectual disabilities as well.
- 8. Incarceration Is Particularly Harmful To Individuals With Intellectual Disabilities:** Offenders with intellectual disabilities are more likely than others to be victimized by other inmates or jail staff. They also have difficulty understanding and following prison rules and schedules. This means that offenders with intellectual disabilities often spend more time in jail or prison due to disciplinary infractions. They may also be unable to meet requirements of parole eligibility dates and thus spend more time in prison.

9. Do Not Let A Person With an I/DD Get Caught In The “Revolving Door”: Many adults and juveniles with I/DD are arrested for minor offenses that directly relate to their disability. Criminals often use them as scapegoats or “look-outs”. They may cycle repeatedly through the courts and jails, charged with the same petty offenses. In addition, they have often been the victim of crime, including violent crime, which has a deleterious effect on their ability to function well in the community.

- This “revolving door” is not only a burden to the courts and the criminal justice system, but it is costly to society, to these individuals and to their families. To limit recidivism, it may be of assistance to put services and support structures in place as well as limit contact with the environment and stimuli that led to the initial offense.

10. Be Mindful of Terminology You Are Using: See pages 5 and 6.

VII. Communication

A. Communication Difficulties for Persons with I/DD

People with an intellectual or developmental disability (I/DD) face a number of communication difficulties, all of which negatively affect their rights in the judicial process. The following is a list of some of these difficulties:

- ***Eagerness to Please:*** Individuals with intellectual or developmental disabilities do not communicate on an “equal footing”. They are eager to please others and are often unusually accommodating, especially to those persons they view as being in positions of authority (police, attorneys, judges).
- ***Concrete Thinking Patterns:*** Individuals with intellectual or developmental disabilities are unable to engage in abstract thinking. They think only concretely, for example: when asked if he wishes to waive his rights to have an attorney present before talking to the police, an individual with an I/DD may be concretely focused on waving his right hand as opposed to waving his left hand.
- ***Communication through Mimicking:*** Individuals with intellectual or developmental disabilities often learn to do things the “right” way by copying others. They learn to communicate by affirming the choice that is suggested last. Example: “John Doe, were you at the movies or the grocery store?” The individual is more likely to pick “grocery store” as it was the last option presented.
- ***Communication through Protectors:*** Individuals with intellectual or developmental disabilities learn to communicate through the “voice” of a protector. In the hands of the wrong “protector” instead of friendship there is domination and the person with the disability can engage in crime at another’s request.
- ***Communication through Bluffing Greater Understanding:*** Individuals with an intellectual or developmental disability often seek to mask their disability, trying to pass for so-called “normal”.
- ***Communication through a Pleasant Façade:*** Individuals with an I/DD learn that smiling is one way to get approval or to get their needs met. Problems may arise in circumstances where smiling is not appropriate.
- ***Problems with Receptive and Expressive Language:*** The most common communication difficulty is the problem that individuals with I/DD have in expressing themselves, usually because of intellectual deficits. They may not be receptive to the ordinary flow of spoken language requiring that they be spoken to more slowly and clearly.
- ***Limited Memory/Impaired Recall:*** Even when individuals with I/DD can verbalize effectively, their ability to remember and recall events may be impaired. This is particularly true of events that the individual has not deemed important.
- ***Impulsivity/ Short-Attention Span:*** Individuals with I/DD are often described as having poor impulse control. This characteristic is related to difficulties with attention span and focus.

B. Communication Tips

- When speaking to an individual with an I/DD, the location of the meeting is important to keep in mind in order to optimize effectiveness and accuracy of the information. The area should be:
 - Quiet
 - Private
 - Free from Distractions

If a location exhibits these characteristics the likelihood of **sensory overload** is diminished greatly. Sensory overload occurs when one or more of an individual's senses are overstimulated. Too much noise, smells, or visual distractions can cause sensory overload. Each individual reacts differently if overload presents itself; some may shut down and become non-communicative while others may become excited, loud or agitated.

Outlined below is a list of suggestions to improve your communication and a list of recommended do's and don'ts with an individual who has intellectual or developmental disability. Every person is different; try to tailor your words and actions to the needs of the individual.

- Be prepared to allot more time and increased patience required.
- Keep sentences short; use simple, direct sentences and words.
- Identify yourself clearly, include your role and the reasons why you are needed. Each person in the room should also do this. You may need to do this more than once.
- Say the person's name often.
- Use a calm tone and volume.
- Give the person time to answer you.
- Demonstrate relaxed and open body language.
- Speak directly to the person with the I/DD, not family or aides who may be present.
- Make sure you make eye contact before beginning to speak to ensure you have their attention.
- Be sensitive to fear, non-verbal cues, over compliance, resistance, and body language.
- Be respectful when offering assistance.
- Be careful when asking descriptive questions. Some people with I/DD have some degree of prosopagnosia or "face-blindness".
- Repeatedly check for comprehension. Don't accept a nod as understanding. Ask the person to repeat the information back to you in their own words.
- Keep your language concrete and ask for concrete answers.

Do's	Don'ts
<ul style="list-style-type: none">• Allow extra time for the individual with an I/DD to think about the question and respond.	<ul style="list-style-type: none">• Use terms or phrases with multiple meanings; "knock it off" or "cut it out" for example.
<ul style="list-style-type: none">• Ask the individual to repeat any information you may have said in their own words to ensure they comprehend.	<ul style="list-style-type: none">• Ask Yes or No questions, rapidly asking several questions, and questions pertaining to time or a reason behind a behavior.
<ul style="list-style-type: none">• Give praise and encouragement.	<ul style="list-style-type: none">• Use legal jargon.
<ul style="list-style-type: none">• Break large tasks into smaller parts and give clear instructions.	
<ul style="list-style-type: none">• Allot for a longer time frame but break it up to shorter segments and allow breaks; this will aid with attention and limit fidgety behaviors.	

IX. Resources

A. The National Center on Criminal Justice and Disability (NCCJD)

The Arc received funding from U.S. Department of Justice, Bureau of Justice Assistance (BJA) to create The Arc's National Center on Criminal Justice and Disability (NCCJD). NCCJD serves as a national clearinghouse for information and training on the topic of people with intellectual and developmental disabilities (I/DD) as victims, witnesses, suspects, or offenders of crime. NCCJD is partnering with a broad spectrum of criminal justice professionals including law enforcement, legal, victim, and disability advocates at the national, state, and local levels to create safer lives for people with I/DD who become involved in—or are at risk of becoming involved in—the criminal justice system. NCCJD's products and services include:

- Training and technical assistance (including monthly webinars, web-based training and on-site training)
- Information and referral (see NCCJD's website for a form or e-mail us)
- On-line resource library (to include fact sheets, current research, and a state-by-state database of relevant laws and legislation, expert attorneys, witnesses, forensic interviewers, and victim advocates)
- White papers to promote identification of issues in the field
- Evaluation support of promising practices

NCCJD's goal is to build the capacity of the criminal justice system to respond to gaps in existing services for people with disabilities. NCCJD's focus is on people with I/DD who remain a hidden population within the criminal justice system with little or no access to advocacy supports or services.

For more information:

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www.thearc.org/NCCJD

B. Louisiana Disability and Legal Resources

The Louisiana Disability and Legal Resources (LDLR.org) is an [online resource](http://www.ldlr.org) for information on legal and disability issues, resources, and terminology. The LDLR contains information for legal professionals who need information on navigating the disability services system, and for individuals and families who need information on navigating the legal system. LDLR.org is a joint effort of The Arc of Louisiana and the Independent Living Research Utilization (ILRU) and is made possible through a grant (H133A110027) from the National Institute on Disability and Rehabilitation (NIDRR) and the Southwest ADA Center.

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www.ldlr.org

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Note: The above is not intended to be an exhaustive list of potential reference

Louisiana Disability Legal Resources

Louisiana Disability Legal Resources

The ADA & Access to Justice for Individuals with an Intellectual Disability

