

Individuals with Intellectual Disabilities and the Criminal Justice System Supporting a Suspect/Offender

Background: There is no evidence to indicate that people with intellectual disabilities are more likely to commit crimes, however, several research studies indicate that those with intellectual disabilities are over represented in the criminal justice system in the United States. Some of the reasons for this are:

- High susceptibility to influence,
- Socio-economic factors, and
- Differential treatment by police and the criminal justice system.

What should you know?

- The American with Disabilities Act (ADA) applies to suspects/offenders with developmental disabilities,
- Early identification of a person having an intellectual disability by the criminal justice system can lessen the probability some injustice or inequity will occur,
- Police officers rarely receive training on responding to persons with intellectual disabilities, and
- Disability Service Systems, Human Service Professionals and Disability Advocates must partner with Law Enforcement professionals to ensure due process for individuals with intellectual disabilities.

What to Do?

The Arc's Justice Advocacy Guide (<http://www.thearc.org/document.doc?id=3669>) identifies steps for Human Service Professionals who are supporting an individual who is a suspect or offender.

Step One - Investigation: Make sure law enforcement officials know the person has an intellectual disability. During the investigation stage it is critical that the individual has a support person who is familiar with them and their disability. This person should have a basic understanding of the criminal justice process or find someone who can help.

Step Two - Arrest and Charge: Get to know the attorney as soon as possible and establish communication with the lawyer from the beginning of the case, before any court appearances, if possible. Defense attorneys often fail to recognize intellectual disabilities. Even if they are aware of the disability, attorneys are often not familiar with special procedures that can divert the individual from the criminal justice system. If the attorney does not return your calls, send a certified letter. Stay involved in the case and let the attorney know you want to know all upcoming court dates so you can attend.

Step Three - Custody: Make sure jail personnel know that the suspect has a disability and the dangers the person may face if placed in protective custody. Your state protection and advocacy agency can help you find what the inmate's rights are once the person is in jail, how to get medication to them, what to do if the person may be in danger, and how to restore SSI and other benefits.

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Step Four - Pre-Trial: Make sure that competency testing and any other issue is conducted by experienced professionals who are in the intellectual disability field (not by those whose expertise is only in mental illness). You can help the attorney develop alternative diversions from court proceedings if the charges are not too serious and the court will allow this. Find out as much as you can about treatment or training programs available in your area and provide a list to the attorney.

Step Five: During Trial: Ensure that the attorneys have all the information they need and educate the court about its requirement to provide accommodations. Some accommodations may include:

- Familiarizing the person with the courtroom to prepare for trial,
- Allowing the person's testimony outside the courtroom,
- Tape recording the testimony,
- Allowing a support person to accompany the person during the trial,
- Allowing the person frequent breaks,
- Provide easy to understand information about court notices and provide assistance with completing court documents.

Resources

Louisiana Disability Legal Resources. This project is a joint effort of The Arc of Louisiana and the ILRU (Independent Living Research Utilization) project to connect legal professionals, human service professionals, advocates, Louisianans with disabilities and their families. Numerous resources are available. <http://www.thearca.org/programs/louisiana-disability-legal-resources/>

Arc National Center on Criminal Justice. The Arc received funding from the Bureau of Justice Assistance (BJA), the U.S. Department of Justice to create The Arc's National Center on Criminal Justice and Disability (NCCJD). This is the first national effort of its kind to bring together both victim and suspect/offender issues involving people with intellectual and developmental disabilities (or I/DD) under one roof. <http://www.thearc.org/NCCJD>

The Americans with Disabilities Act and Criminal Justice: Mental Disabilities and Corrections <http://www.ncjrs.gov/txtfiles/amdisact.txt>

Persons with Intellectual Disability and the Criminal Justice System: What Families, Providers and Law Enforcement Should Know

https://www.adhc.nsw.gov.au/_data/assets/file/0003/264054/Intellectual_and_cognitive_disability_in_criminal_justice_system.pdf

Pursuing Justice for People with Cognitive Disabilities

https://www.adhc.nsw.gov.au/_data/assets/file/0003/264054/Intellectual_and_cognitive_disability_in_criminal_justice_system.pdf

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