

BUILDING BRIDGES BETWEEN CRIMINAL JUSTICE AND DISABILITY COMMUNITIES

**JESSICA OPPENHEIM, ESQ.
CRIMINAL JUSTICE ADVOCACY PROGRAM
THE ARC OF NEW JERSEY**

THANK YOU FOR JOINING US TODAY

- ▶ 1 in 5 people in the country with a disability
- ▶ Overrepresentation in the criminal justice system as defendants and as victims
- ▶ Important to effectively engage law enforcement, criminal justice professionals and other authority figures

- ▶ As with the general population, most individuals with intellectual or developmental disabilities (I/DD) are law-abiding citizens
- ▶ Individuals with I/DD face a greater risk of criminal justice involvement as either defendants or victims/witnesses

THE NUMBERS AS DEFENDANTS AND VICTIMS

- ▶ Rate of violent victimization is not only double, but triple*
- ▶ They represent 4% to 10% of the prison population, with an even greater number of those in juvenile facilities and jails.
- ▶ 70% of justice-involved youth have disabilities.

** Bureau of Justice Statistics: Crime Against Persons With Disabilities, 2009–2012 Statistical Tables*

AS A DEFENDANT/SUSPECT

- ▶ There is no bar to being charged or prosecuted because you have an I/DD
- ▶ Issues related to competency* at the time of the crime or the ability to understand criminal proceeding may be raised later
- ▶ National Center on Criminal Justice and Disabilities

*To view NCCJD's webinar and download corresponding white paper on the topic of competency and I/DD, see:

<http://www.thearc.org/NCCJD/publications>

WHY COMMUNICATION IS KEY

- ▶ Many CJ professionals lack understanding about I/DD and have no access to referral sources, technical assistance or training.
- ▶ For many reasons, cognitive impairment and deficits can limit meaningful interaction with the criminal justice system



WHY WE NEED TO COMMUNICATE

- ▶ Agencies created to assist people with disabilities are not trained or equipped to work with justice-involved populations.
- ▶ Systems, by and large, have not been put in place to assist this population.

I/DD SYSTEM

- ▶ Lack of expertise or familiarity with the CJ system
- ▶ Service Providers unsure how to address the needs of justice-involved clients
- ▶ Lack of incentives to provide housing and services to justice-involved people with I/DD, often considered “high risk”

RESEARCH TELLS US...

- ▶ When any criminal offender has supervision and is gainfully employed or has activities in the community, recidivism is reduced
- ▶ Justice-involved people with I/DD receive little specialized attention from supervisory systems
- ▶ They also face more challenges becoming part of the work force and finding adequate housing

KEY “TAKE AWAYS” EVERY ADVOCATE SHOULD KNOW

- ▶ Help officers find their “why”
- ▶ Helping officers identify I/DD
- ▶ Common interactions
- ▶ ADA accommodations
- ▶ Crisis prevention vs. crisis intervention
- ▶ Procedural justice
- ▶ Community Policing

MOTIVATORS

- ▶ Law enforcement training on I/DD is rare, and demand is on the rise
- ▶ Misunderstandings about psychiatric disabilities and I/DD are common
- ▶ Higher rate of involvement in CJ system
- ▶ Supports community policing philosophy
- ▶ Incorporates procedural justice

WHY I/DD = HIDDEN DISABILITY



- ▶ Many people characterized having a “mild” form of I/DD and “look” no different from others, which can lead to more severe consequences in the criminal justice system
- ▶ Due to fear of rejection, they often don't want to disclose their disability and over time learn how to fake understanding and “get by”
- ▶ Communication differences/Cognitive differences are hard to identify

INTERACTIONS LAW ENFORCEMENT MAY KNOW

- ▶ Used by criminals without disabilities unknowingly
- ▶ May “cover” for codefendant, confess or run
- ▶ Offensive or suspicious behavior
- ▶ “Strange” or out of the ordinary behavior
- ▶ Wandering
- ▶ Seizures

APPLYING AMERICANS WITH DISABILITIES ACT (ADA) TO POLICING SERVICES

- ▶ Urges officers to identify disability and respond appropriately
- ▶ More lenient treatment is not requested, but effective accommodations/supports
- ▶ Physical vs. cognitive (overt vs. covert)
- ▶ ADA lawsuits against law enforcement in some states (ex: failure to train)

DISADVANTAGES IN THE SYSTEM

- ▶ Disability often unnoticed
- ▶ False confessions happen due to desire to please officer/investigator or misunderstanding or desire to stop questions
- ▶ Placed in institutions to “regain” competency
- ▶ Often unable to assist in own defense
- ▶ Rights are waived unknowingly
- ▶ Testimony deemed not credible

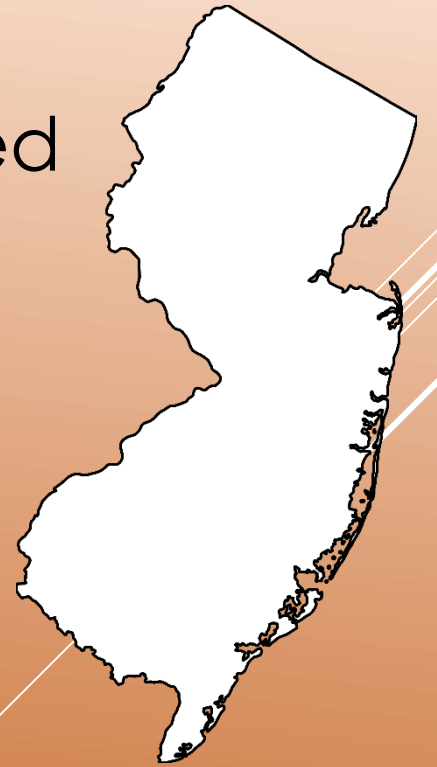
I/DD-SPECIFIC ACCOMMODATIONS LAW ENFORCEMENT CAN USE



- ▶ Take extra time to ask more questions to determine presence of disability
- ▶ Speak slowly, clearly; check for understanding
- ▶ Use simple language, pictures, symbols, communication boards
- ▶ Call on local disability agencies
- ▶ Assist filling out forms as needed
- ▶ Request support person when reading Miranda card

WHAT WE'RE DOING IN NEW JERSEY

- ▶ Pathways to Justice with The Arc of the United States National Center on Criminal Justice and Disability, www.thearc.org/NCCJD



LEADERSHIP SUMMIT IN NEW JERSEY

- ▶ Triggered by NPR series on sexual assault of people with I/DD, June 2018 Summit and White Paper- Addressing Sexual Violence Against People with I/DD: A Blueprint for an Empowered Future
- ▶ Partners in Justice and the Disability Response Team
- ▶ What else? Law Enforcement summits, luncheons, group activities

WHAT CAN THE COMMUNITY DO?



LAW ENFORCEMENT COMMUNITY V. SOCIAL SERVICE COMMUNITY

- ▶ About 38,000 sworn law enforcement officers in 600 law enforcement agencies-no knowledge of the DD system
- ▶ DDD serves about 23,000 people living in all kinds of settings-independent, family, school, group home-no knowledge of the cj system
- ▶ To have effective communication must educate self first

HOW COMMUNICATION MATTERS

- ▶ One Example-Bail Reform
- ▶ Complaint-Warrant results in arrest and minimum 24 hours in jail
- ▶ Conditions, not money bail

* Danielle's Law-another example

COMMUNICATION STRATEGIES

- ▶ Take the opportunity to communicate with local police before there is an emergency
- ▶ Introduce self and family
- ▶ Create opportunities to meet in non-crisis settings
- ▶ Provide tip cards, wallet cards

COMMUNICATION STRATEGIES: NON-EMERGENT

- ▶ Follow instructions
- ▶ Be prepared to explain the difficulty in communication
- ▶ Explain possible behaviors before they happen, if possible

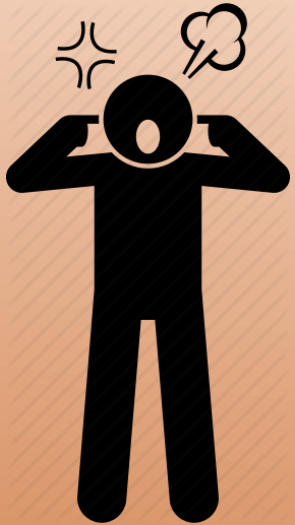
COMMUNICATION STRATEGIES: CALLING 911

- ▶ Call 911 for emergencies
- ▶ Realize that a squad car will come along with ambulance, first aid squad
- ▶ Be prepared to explain the person's disability quickly and efficiently-practice!
- ▶ Know how to describe the disability in simple terms
- ▶ Let them know if you are the guardian

COMMUNICATION STRATEGIES: CALLING 911

- ▶ Know names and contacts for service providers
- ▶ Don't use acronyms
- ▶ Provide practical suggestions for how to talk to the person (if touch, sound or eye contact is an issue)
- ▶ Let officers know best ways to communicate
- ▶ Let officers know if there's an object that helps

HELP OFFICER UNDERSTAND “TRIGGERS”



- ▶ Sensory issues
Crowds, sounds/noise, space (too large, crowded, bright or loud) smells, food, clothing (too tight/scratchy)
- ▶ Social situations
Unplanned events, changes in plans, large gatherings

BAD BEHAVIOR OR EMOTIONAL REACTION?

“I was not always accepted when I was growing up. Sometimes my emotional reactions were misunderstood in public and sometimes even within my own family... As I grew up, I continued to run into people who did not understand my reactions to certain situations. My actions in some situations were viewed as behavioral problems instead of just emotional reactions.

*On one episode of the TV show COPS, a man with developmental disabilities broke up with his girlfriend. He did not take it well and ended up in an **emotional flare up**. He was screaming when officers arrived. One officer said, ‘One more outburst and you’re going to jail!’ Then the man let out a cuss word, and he was arrested for disorderly conduct. Was he just reacting emotionally to a difficult situation or was he showing bad behavior?”*

USE OF FORCE AND BEHAVIORAL HEALTH

- ▶ Little data collected about excessive use of force on people with developmental disabilities.
- ▶ 2017 Washington Post reports about 24% of people killed by police had signs of “mental health” challenges
- ▶ Work to make changes since the death of Ethan Saylor
- ▶ July 2016 White House convened a forum on disability and criminal justice reform

KEEP IN MIND-MORE TAKE AWAYS

- ▶ Arrest can still occur
- ▶ Understand basics of court system
- ▶ ADA accommodations also apply in court setting
- ▶ ADA Coordinator at the court
 - ▶ www.njcourtsonline.org

THE CRIMINAL JUSTICE ADVOCACY PROGRAM

- ▶ Provides alternative to incarceration and case management for people with I/DD in the criminal justice system
- ▶ Provides information to attorneys and the judiciary about people with I/DD
- ▶ Assists probation and parole by locating and securing services in the community and helping to ensure compliance

ASSISTING OUR CLIENTS

- ▶ Locating Information and Background-Intake
- ▶ Obtaining a signed Release of Information and using it to gather background about the offender
- ▶ School records, medical records, prior criminal history
- ▶ Getting a full, comprehensive picture of the client helps inform possible services

ASSISTING OUR CLIENTS

Identify existing services:

- ▶ Housing: Independent Housing, Residential Provider.
- ▶ Disability Service Providers: supported employment services, respite care, recreational and other programs.
- ▶ Psychologists, therapists and programs that address offender issues: sexual offending behavior, drug/alcohol addiction.

PERSONALIZED JUSTICE PLANS

PJP format:

- ▶ Address multiple areas and can be tailored to meet the needs of each individual
- ▶ **Draft a plan:** include the input of all involved parties – most importantly the offender! If the person is not willing to follow the recommendations of the PJP it will not work!

PERSONALIZED JUSTICE PLANS

- ▶ Each case is individual, no two PJPS are the same.
- ▶ PJPs must address the needs of the Court.
- ▶ Accountability and Responsibility must remain with a competent defendant.

GOAL OF PJP

- ▶ Preventative tool against future criminal involvement
- ▶ Reduction in recidivism
- ▶ Successful integration in the community

To view a webinar on PJPs, see NCCJD's webinar:
<http://www.thearc.org/NCCJD/training/webinars/archive#alternatives-to-incarceration>

KNOWLEDGE IS KEY



- ▶ Successful advocacy with regards to the criminal justice system is dependent upon our knowledge and understanding of both systems
- ▶ The human service system and criminal justice system function in two distinct spheres, each with their own vocabulary and hierarchy
- ▶ Clear, concise, jargon-free communication between systems is the key to successfully advocating for people with developmental disabilities who become involved in the criminal justice system

NOTHING ABOUT US WITHOUT US... HOW TO MAKE YOUR VOICE HEARD

Communicate with Law Enforcement

Communicate with Legislators

The Arc of New Jersey

SELF ADVOCACY PROJECT

CRIMINAL JUSTICE ADVOCACY PROGRAM

QUESTIONS?

**Jessica S. Oppenheim,
Director, CJAP, The Arc of NJ
joppenheim@arcnj.org
www.cjapnj.org
(732)246-2525 ext. 31**