

# Partners In Justice

## Information about People with Intellectual Disabilities in the Criminal Justice System For Judges and Attorneys



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# Some Commonly Held Beliefs About Criminal Defendants

- If a defendant says “I understand” under oath, he or she actually understands what is being said.
- A person understands sequences and consequences, for example, if X occurs, y will follow.
- A person understands the abstract language of the criminal justice system.

# Common Beliefs, continued

- If a defendant pleads guilty, he or she has decided the risk of trial is greater than the certainty of punishment offered in the plea.
- A defendant understands the nature of punishment and knows that jail or prison means a loss of freedom from which you cannot go home on weekends or holidays.

# Beliefs About Human Motivation

- **People will act to minimize punishment consequences to themselves.**
- **People will act to minimize their culpability in the eyes of others.**
- **People are more afraid of punishment than of stigma.**

# Human Motivation continued

- **People know the difference between the good guys and the bad guys.**
- **People will identify mitigating factors for themselves.**

# Scope of the Problem

- **How many people with mental retardation are in the criminal justice system?**
  - **1990 Census estimates 6.2--7.5 million people in the US have mental retardation. Studies suggest between 2 and 10 percent of the prison population has mental retardation.**

# Scope of the Problem

- People with mental retardation are more likely to be arrested, convicted, sentenced to prison, and victimized in prison (Santamour, 1986).
- Once in the criminal justice system, these individuals tend to serve longer sentences due to an inability to understand or adapt to prison rules.

# Scope of the Problem

- **Do people with mental retardation become victims of crime more often than those without a disability?**
  - **Research finds that people with disabilities are at least twice as likely as others to be victimized.**

# What is Mental Retardation?

1. **A disability present from childhood**
2. **A person with an IQ lower than 70**
3. **A person with Adaptive Behavior Deficits**

# Intelligence Includes:

- **Good memory**
- **Ability to use abstract thinking**
- **Problem-solving ability including the use of practical problem-solving skills in daily life**
- **Ability to generalize knowledge – that is – to apply what has been learned through one situation to another new situation**

# What are Adaptive Behavior Deficits?

- **Communication - receptive or expressive language**
- **Self-Care**
- **Mobility**
- **Independent living skills**
- **Learning problems**
- **Self-Direction**
- **Economic self-sufficiency or ability to work**

# Mental Retardation vs. Mental Illness

## Mental Retardation

**A permanent condition**

## Mental Illness

**A disease/sickness  
which may be  
temporary, last  
years, or cycle**

# What's the difference?

## Mental Retardation

Low IQ

Before age 18

Responds to  
training/education

## Mental Illness

Low OR High IQ

Occurs at any age

Responds to  
therapy/treatment

# Mild Mental Retardation

- **Most people with mental retardation who encounter the criminal justice system have mild mental retardation.**
- **Mild Mental Retardation means an IQ in the range of 52-70.**
- **People with Mild MR may be difficult to recognize or distinguish from the general population.**

# Mild Mental Retardation con't.

- The term “mild” can be misleading - it implies that those with mild MR do not experience a significant disability.
- Mild mental retardation can have a profound impact on an individual's life, particularly when the person becomes involved in the criminal justice system.

# Characteristics of People with MR

- **The inability to move from abstract to concrete thought. Most people can move from concrete to abstract thinking without effort. For people with MR, this is often difficult, if not impossible.**
  - **If a word has both a concrete and an abstract meaning, the person will say they understand (concrete meaning) even when you are using the abstract meaning (wave vs. waive).**

# Characteristics of People with MR

- **Abhorrence for the term “mental retardation”.** The hurt and stigma associated with this term is strong. People will deny having mental retardation, even when against their best interest.
- **Real memory gaps.** Memory impairment is a basic symptom of brain damage. People with MR are more likely to have memory gaps than others.

# Characteristics of People with MR

- **Problems with receptive and expressive language. Often a large difference between ability to understand and ability to speak exists. People with mental retardation can mimic expressive language even though they have minimal understanding of what is being said. They may pick the wrong meaning of a word that can be used in different contexts, e.g. “right” could mean:**
  - right / wrong    - right / left
  - having rights    - knowing how to write.

# Characteristics of People with MR

- **Short attention span.** Like memory gaps, people with mental retardation are more likely to have difficulty staying focused.
- **Eagerness to please.** People with MR do not communicate on equal footing. They have learned that life is easier if they say “yes” to people seen to be authority figures.

# Mental Retardation and the Judicial System: Competency Issues

## ■ **Competence:**

An individual's capacity to comprehend important concepts and to act on the basis of that understanding at a minimally acceptable level of skill.

## ■ **Mental retardation affects:**

- Competence to confess,
- Competence to stand trial,
- Competence to plead guilty, and
- Competence to stand witness.

# Competence to Confess

- **Confessions = waiver of constitutional rights**
- **Legally valid waivers must be made:**
  - Voluntarily,
  - Knowingly, and
  - Intelligently.
- **Waivers by persons with mental retardation have significant implications for several steps in the judicial process:**
  - Police interrogation,
  - *Miranda* warnings, and
  - False confessions

# Police Interrogations

- **During interrogations, suspects with mental retardation are:**
  - More influenced by authority figures,
  - More likely to provide incriminating evidence about themselves, and
  - More likely to give false statements.
- **Voluntariness inquiry:**

Confessions elicited by official/police coercion = involuntary = invalid

# *Miranda Rights*

- **Knowing and intelligent waiver must be made with full awareness of both the:**
  - **Nature of the right being abandoned, and the**
  - **Consequences of the decision to abandon it.**

# *Miranda* Rights

- **Difficult/abstract vocabulary/concepts are contained in the *Miranda* warning:**
  - **Counsel**
  - **Waive**
  - **Consult**
  - **“Right to remain silent”**
  - **“If you cannot afford an attorney, one will be appointed for you,”**
  - **“Anything you say can and may be used against you in a court of law”**

# *Miranda* Rights, cont'd

- **Totality of the circumstances test - Courts determine whether a suspect's waiver was knowing and intelligent by considering:**
  - IQ
  - Chronological age
  - Education
  - Previous experience in the criminal justice system - especially experience waiving rights in confession

# False Confessions

- **Johnny Lee Wilson:**
  - 19 year old with mental retardation
  - Spent 9 years in prison for murder he did not commit
  - “I wasn’t there, but if you say I did it, I must have.”
  - When offered a plea bargain, he was told his choices were life in prison or death. He was not told that going to trial was an option.
  - He believed if he got the death penalty, he would be executed the next day.

# False Confessions con't

- **Transcript from taped interrogation of D. Vasquez, a man with mental retardation**
- **Detective: Did she tell you to tie her hands behind her back?**
- **Vasquez: Ah, if she did, I did.**
- **Detective: Whatcha use?**
- **Vasquez: The ropes?**
- **Detective: No, not the ropes, Whatcha use?**
- **Vasquez: Only my belt.**
- **Detective: No, not your belt...What did you cut down? To use?**
- **Vasquez: That, uh, clothesline?**
- **Detective: No...Think about Venetian blinds, Remember cutting the Venetian blind cords?**
- **Vasquez: Ah, it's the same as rope.**

# False Confessions, con't

- **Detective:** Okay, now, tell us how it went.
- **Vasquez:** She told me to grab the knife and, and, stab her...that's all.
- **Detective (voice raised):** David. No. David!
- **Vasquez:** If it did happen, and I did it, and my fingerprints were on it...?
- **Detective (slamming his hand on the table and yelling):** You hung her!
- **Vasquez:** Huh? What?
- **Detective:** You hung her!
- **Vasquez:** Okay.....so I hung her ....

# Competence to Stand Trial

- **To be found competent to stand trial, defendants must:**
  - **have both a *rational* and *factual* understanding of the nature of the proceedings against them; and**
  - **be able to communicate with and assist their counsel in preparing a defense.**

# Competency to Plead Guilty

- **A guilty plea =**
  - **Waiver of all of defendant's constitutional rights**
  - **Full equivalent of a conviction**
  
- **Controversial issue:**
  - does competency to stand trial = competency to plead guilty?**

# Victims/Witnesses

- **Lack of credibility:**
  - **Fidgeting**
  - **Appearing distracted/disinterested**
  - **Swinging their legs**
  - **Not paying attention/not focusing on the trial**
  - **Doodling/drawing**
  - **Smiling at inappropriate times**
  - **Speaking loudly/aimlessly**

# Communication is the Key!

- **Speak directly to the person. Make eye contact before you speak and say his/her name often.**
- **Keep sentences short.**
- **Use simple language. Speak slowly and clearly.**
- **Break complicated instructions or information into smaller parts.**

# Communication is the Key!

- **Be patient and take time giving or asking for information.**
- **Treat adults as adults regardless of their disability.**
- **If you are unsure if the person really understands what you are saying, ask him/her to repeat it in his/her own words.**
- **If the person does not seem to understand what you are asking, ask the question in another way.**

# The Client with Mental Retardation

- Risks of inadequate representation increase when the client has mental retardation.
- ABA Model Rule 1.14: Client under a Disability:
  - Lawyer must, insofar as possible, maintain a “**normal**” relationship with a client with mental retardation
  - Lawyer must make special effort to **accommodate** the needs of each client

# PreScreen for Mental Retardation/DD

## HISTORY QUESTIONS

1. Did you ever attend special classes in school?

Yes \_\_\_\_\_ No \_\_\_\_\_ Comment: \_\_\_\_\_

2. Have you ever received Mental Health or DD services?

Yes \_\_\_\_\_ No \_\_\_\_\_ Comment: \_\_\_\_\_

3. Do you get any kind of social security check?

(SSI=blue envelope; SSDI = brown envelope)

Yes \_\_\_\_\_ No \_\_\_\_\_ Comment: \_\_\_\_\_

4. Did you ever participate in Special Olympics?

Yes \_\_\_\_\_ No \_\_\_\_\_

Comment: \_\_\_\_\_

5. Have you every had a job? Yes \_\_\_\_\_ No \_\_\_\_\_

Where? \_\_\_\_\_

How many hours per day/week, Comment: \_\_\_\_\_

6. Do you ever hear voices or see things other people don't see or hear?

Yes \_\_\_\_\_ No \_\_\_\_\_ Comment: \_\_\_\_\_

# Prescreen Form, (cont'd)

## RESPONSE QUESTIONS

7. Where are you now?

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

Comment: \_\_\_\_\_

8. What season is this?

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

Comment: \_\_\_\_\_

9. How many months are there in a year? Correct \_\_\_\_\_ Incorrect \_\_\_\_\_

Doesn't know \_\_\_\_\_

Comment \_\_\_\_\_

10. What does "Waive your rights" mean? Correct \_\_\_\_\_

Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

Comment \_\_\_\_\_

11. What is the difference between a plea of "guilty" and a plea of "not guilty"?

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't Know \_\_\_\_\_

Comment: \_\_\_\_\_

# Prescreen Form, (cont'd)

## RESPONSE QUESTIONS (cont'd)

12. What does it mean to “serve time”?

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

Comment: \_\_\_\_\_

13. How many minutes are there in one and one and a half hours?

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

Comment: \_\_\_\_\_

14. Explain to me what “rights’ are. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

15. Explain how a lawyer can help you. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_ Doesn't know \_\_\_\_\_

16. Explain why you don't have to talk to me. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_

Doesn't know \_\_\_\_\_

17. Ask the individual to identify the following coins as you put them on the table: Nickel, Quarter, Penny, Dime. Correct: \_\_\_\_\_ Incorrect \_\_\_\_\_

18. Ask the person to identify the coin worth the most and the coin worth the least. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_

19. Ask the person to write the following after you say it: “Call mom at home.”

Correct \_\_\_\_\_ Incorrect \_\_\_\_\_

# Prescreen Form, (cont'd)

## RESPONSE QUESTIONS (cont'd)

20. Set out two quarters, three dimes, four nickels and seven pennies. Ask the person to count out \$.86. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_
21. Ask the person to read the following: "Go to the store and buy bread, milk and sugar. Correct \_\_\_\_\_ Incorrect \_\_\_\_\_.

## OBSERVATION QUESTIONS

22. Does the person act or talk in a strange manner? Yes \_\_\_\_\_ No \_\_\_\_\_
23. Does the person seem unusually confused or preoccupied? Yes \_\_\_\_\_  
No \_\_\_\_\_
24. Is the person's speech hard to understand? Yes \_\_\_\_\_ No \_\_\_\_\_
25. Does the person's vocabulary seem limited? Yes \_\_\_\_\_ No \_\_\_\_\_
26. Does the person have difficulty expressing him/herself?  
Yes \_\_\_\_\_ No \_\_\_\_\_
27. Is the person's appearance unkempt or inappropriate for the weather?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Other Comments: \_\_\_\_\_

# In Conclusion

- **Remember, there are experts who can help you when you have questions. You are not expected to be an expert on intellectual disabilities. For more information, contact:**
  - **The Arc of North Carolina (and local chapters)**
  - **The local mental health agencies**
  - **The State Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Justice Innovations Team**
  - **Governor's Advocacy Council for Persons with Disabilities**

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Partners in Justice dedicates this presentation to the memory of Deborah Greenblatt, Esq., a tireless advocate for people with disabilities and charter member of the Partners in Justice Advisory Committee.



# For further information, contact:



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