Partners In Justice

Information about People with Intellectual Disabilities in the Criminal Justice System

For Judges and Attorneys

This project is supported by The Arc of North Carolina and the NC Council on Developmental Disabilities and the funds it receives through P.L. 106-402, the Developmental Disabilities Assistance and Bill of Rights Act of 2000.
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.
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.
People know the difference between the good guys and the bad guys.

People will identify mitigating factors for themselves.
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.
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.
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-sufficiently or ability to work
<table>
<thead>
<tr>
<th>Mental Retardation</th>
<th>Mental Illness</th>
</tr>
</thead>
<tbody>
<tr>
<td>A permanent condition</td>
<td>A disease/sickness</td>
</tr>
<tr>
<td></td>
<td>which may be temporary, last years, or cycle</td>
</tr>
</tbody>
</table>
### What’s the difference?

<table>
<thead>
<tr>
<th>Mental Retardation</th>
<th>Mental Illness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low IQ</td>
<td>Low OR High IQ</td>
</tr>
<tr>
<td>Before age 18</td>
<td>Occurs at any age</td>
</tr>
<tr>
<td>Responds to training/education</td>
<td>Responds to therapy/treatment</td>
</tr>
</tbody>
</table>
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.
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).
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.
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.
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.
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
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.
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 ….
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.
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:__________________________________________________
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_____
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________
RESPONSE QUESTIONS (cont’d)

20. Set out two quarters, three dimes, four nickels and seven pennies. Ask the person to count out $0.86. 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:___________________________________________________
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

In Conclusion
This presentation was developed especially for North Carolina by Partners in Justice, a statewide collaborative effort designed to assist individuals with cognitive disabilities who are at risk of becoming involved in the criminal justice system. The North Carolina Council on Developmental Disabilities provided grant funding to The Arc of North Carolina to support the project. Many different, excellent training materials were researched and adapted with special consideration for the specific needs of the citizens of North Carolina.

Special thanks goes to the members of the PIJ Advisory Committee; George R. “Pete” Clary III, Public Defender, Judicial District 21; Ms. Jeri Houchins, Project Coordinator, Justice Now! Of the People, By the People, and For the People; and, Ms. Diane Nelson Bryen and Ms. Beverly Frantz, National Academy for Equal Justice, for People with Developmental Disabilities, Institute on Disabilities at Temple University.

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.
Partners in Justice
The Arc of North Carolina
4200 Six Forks Road, Suite 100
Raleigh, NC 27609
1-800-662-8706
Project Staff:
Marian Hartman
Ann Elmore

This project is supported by The Arc of North Carolina and the NC Council on Developmental Disabilities and the funds it receives through P.L. 106-402, the Developmental Disabilities Assistance and Bill of Rights Act of 2000.