

**The Arc's
JUSTICE ADVOCACY GUIDE**



*An Advocate's Guide on Assisting Victims and
Suspects with Intellectual Disabilities*

**The Arc of the United States
October 2006**

Foreward

By Robert Perske

Leigh Ann Davis has laid in our lap a word that all of us need to pick up afresh, study, ponder deeply and work into our regular way of life. The word is “victimization.” Having lived longer on the oxygen side of the earth’s crust than most in the field, I’ve observed numerous cases in which persons with intellectual disabilities were victimized unjustly, as both crime casualties and crime suspects. Even so, Davis got me thinking more sensitively about it after reading Step Four:

“Act decisively and promptly when victimization is discovered.”

Shouldn’t special alerts to the victimization of those we value and support trigger an alarm in us like the ones installed in our newest automobiles? How many numbers does researcher Dick Sobsey have to give us before we recognize – really *recognize* that the persons we care about are more often beaten, molested, manipulated, raped, wrongly convicted, ridiculed, laughed at, set up for failure, denied equal justice, and shoved to the fringes of the in-groups than the rest of us? I’m haunted when I think about all the victimizations I observed but didn’t speak out about as much as I could have done.

There is no need for me to write down my long list of victimizations that I can recall. After all, anyone who works in this field will be able to list similar stories from their own memories. They may be just as haunted because they failed to respond as much as they could have done.

Davis has purposely and carefully and in great detail outlined “Steps,” “Stages,” “Questions” and “Resources.” I believe that if each segment is read and pondered slowly and carefully, it could indeed provide a fresh understanding and concern for persons with intellectual disabilities. I like to read such documents in bits and pieces – like a monk in a monastery might do during morning devotions. Some groups may choose to engage in a series of meetings and use the document as a discussion guide.

Once as an executive director of an Arc, a group of members – some professionals and some volunteers – asked me to back their organizing of a task force on “Public Attitude Change.” I was thrilled to do it. They met monthly and passionately discussed all of the negative and positive statements about persons with disabilities that they discovered. Then they responded vigorously. They confronted those who spoke in a demeaning way and offered corrections. To those who spoke out positively, they telephoned or placed in writing kind words of thanks and reinforcement. Now after reading this document, some persons just might want to be part of a similar watchdog task force on “Justice Advocacy” in their community.

No matter whether this document leads to an individual or group study, those who enter it must do it with a passion for what they seek to do. Persons with passion always discover breakthroughs that ordinary persons won’t even begin to sense. With this kind of heightened outlook, all of us can do better as observers of and responders to the victimization of those we work with and care about.

Turn the pages of this guide. See for yourself.

Acknowledgements

The Arc thanks the Office for Victims of Crime (OVC) for providing the initial funding to create the material written specifically for victim's with disabilities in this Guide, which was written in partnership with The National Organization for Victim Assistance (NOVA). We also recognize and thank Cheryl Tyiska, (put in title) with NOVA, who shared her expertise in creating the section on victim's issues.

Many thanks to the South Dakota Council on Disabilities for allowing The Arc to use information regarding offender issues from their recently updated publication, "*The criminal justice and human services systems: A coordination effort*" (2006).

Other advocates contributed their time and expertise to create this practical Guide for members of The Arc. The following people are graciously thanked for their persistent and ongoing determination to address this issue both within their own communities and on a national level.

Wendie Abramson
Director of Disability Services
SafePlace

James Meadours
Co-Director Peer-to-Peer Grant
Texas Advocates

Denise Goobic
Director of the Developmentally Disabled
Offenders Program (DDOP)
The Arc of New Jersey

Shirley Paceley, M.A.
Author, Clinician and National Trainer
Blue Tower Training Center

Nora Baladerian (add credentials)
Therapist, Trainer, Author, etc.
Disability, Abuse & Personal Rights Project

Robert Perske
Nationally Recognized Advocate and Author

Lalenja Harrington
Director of Outreach
The Arc of High Point

Darla Stuart & Jean Solis
The Arc of Aurora

Dedication

James Meadours, a well-known leader in the self-advocacy field, whose courage to talk about his own victimization experience has inspired even the most timid of us to speak out about our own truth in order to help others.

Robert Perske, known to most as "Bob," is an advocate's advocate with a heart others can only aspire to have. His contagious passion for justice in the lives of people with disabilities rubs off on all he encounters, and his hunger for truth, and the revelation of it, will continue to inspire future generations of advocates. Never will there be another like him.

With so many critical issues facing people with intellectual disabilities, why should this one matter?

Injustice affects us all, whether we are directly or indirectly touched by it. For example, if a rapist is never convicted of his crime because the victim has a disability and is not considered a credible witness in court, he will not be prosecuted and will go on raping without fear of the consequences... and the next victim could be your child, your spouse, your neighbor...or the next victim could be you.

The reality is that people with lesser ability to easily talk about, describe or report crimes against them (such as children, people with speech difficulties, people living in institutional settings, the elderly who may have various types of communication challenges, and people with varying types of cognitive/intellectual disabilities) and those who are unwitting suspects often go unheard and ignored in America's criminal justice system. That has to change! You can help make those changes by being informed about the issues addressed in this Guide and making small steps toward justice for people with disabilities in your own community.

People with intellectual disabilities often obtain little or no advocacy once they become a victim or suspect of crime, perhaps due to the small amount of training and education that people in the intellectual disabilities field have regarding criminal justice issues AND the small amount of training many professionals in the police and legal professions have about people with disabilities.

Chapters of The Arc play a key role in helping victims and suspects get one step closer in obtaining justice. The goal of this Guide is to provide chapters with ideas on what can be done when involvement with the criminal justice system occurs. While there are a number of publications chapters can look to when attempting to advocate for someone with intellectual disabilities inside the criminal justice system, most focus either on offender/suspect issues or victim issues, but rarely both. By bringing these issues together in one Guide, advocates can refer to one resource for information as a beginning point in assisting victims and suspects.

The five topics addressed include:

- Responding to Victimization
- Responding to Arrest
- Answers to Commonly Asked Questions
- Justice Advocacy Programs within The Arc
- Other Resources for Victims & Suspects

“We want justice. We have the right to not be beaten up, picked on, called names and murdered...we want to believe that if we report that something is wrong that people will listen and take action. This kind of behavior cannot be tolerated. People have the right to be safe.”

Self-Advocates Becoming Empowered Newsletter, Spring 2004, in response to the hate crime of Ricky Whistnant, a self-advocate leader with disabilities

Advocates *can* respond effectively, and must do so, if people with intellectual disabilities are to receive equal access to justice once inside the criminal justice system. People who are without knowledge about the system or without an advocate who can help them as they go through complicated criminal justice processes are less likely to access justice. Whether someone has just been victimized or is accused of committing a crime, the need for advocacy from the disability community is equally important. Although there are a handful of good programs and resources available throughout the country, much more needs to be done to ensure the safety of individuals with disabilities as victims and suspects.

This booklet provides an overview of the criminal justice system (from the perspective of both a victim and a suspect) that will equip advocates with the knowledge and understanding needed to help people with disabilities and their families know what to do once they are in the justice system. Since the Guide is a web-based document, it will be updated periodically so that resources mentioned throughout the document remain current. For those needing additional assistance or answers that are not provided in this Guide, please call The Arc of the U.S. or your local chapter of The Arc (see section titled “Resources” in the end of this booklet to find your local chapter.)

Responding to Victimization

One conservative estimate from researchers who reviewed the literature regarding victimization and people with developmental disabilities found that they are 4 to 10 times more likely to be victimized than are people without disabilities (Sobsey, Lucardie & Mansell, 1995).¹ Victimization of people with intellectual disabilities is a serious issue that demands close attention by self-advocates, their family members and friends, direct support staff, caseworkers, and criminal justice personnel (both police and victim assistance personnel) who are all needed to help people with disabilities live as safely and as independently in their communities as possible. Below are steps you can take to help prevent victimization and be prepared when victimization occurs.

Step One: Prevent victimization from happening in the first place.

While victimization and abuse cannot be prevented 100% of the time, there are steps parents, advocates and those with intellectual disabilities can take to try to reduce the risk. Advocates can provide training and education about victimization to individuals with disabilities, parents, teachers, police, victim advocates, caseworkers and others who are a part of the person's life. Children with disabilities need early education about the risks of abuse and how to avoid it in a way they can understand. Repetition of this information throughout their lives is vital. There are a number of good educational materials available (see "Resources" at the end of the Guide).

Some chapters of The Arc are proactively bringing attention to this issue and supporting crime victims with disabilities. For example, The Arc of Aurora's "Project Illumination" in Colorado has trained other chapters from around the United States on how to replicate and implement this project in their communities. The chapters and their teams (which consisted of a representative of The Arc, a mental health service provider, a sexual assault service provider, and a college/university) received three days of information that helped prepare them to coordinate a collaborative, multi-sensory outreach that illuminates the impact of sexual violence, including that against people with developmental disabilities, in their communities. The Arc of Riverside in California is partnering with the ["CAN DO Project"](#) which created on-line training for professionals on victims with disabilities and is providing train-the-trainer workshops on abuse

James' Story

James, a well known leader in the self-advocacy field, has spoken out on a number of issues for the past XX years and recently began sharing his story about being raped 3 years ago, filing charges against the offender, and ultimately seeing the conviction and sentencing of the offender. Although very hard for him to do, he told someone about the rape 3 days after it occurred. Initially in shock over what happened, he wondered if maybe it was his fault. He felt shameful and very alone. If self-advocates like James, who regularly speak out in their professions, have difficulty talking about their own victimization, how much more difficult is it for those without self-advocacy skills? Self-advocates and those without disabilities must work together to bring sexual assault and all types of victimization into the light where it can be talked about, closely examined and better understood. Ignoring this issue does not magically make it go away, but only serves to further discount the reality of what most people with intellectual disabilities are facing in their lives.

¹ Sobsey, D., Lucardie, R. & Mansell, S. (1995). *Violence and disability: An annotated bibliography*. Baltimore, MD. Paul H. Brookes Publishing Co.

of children with disabilities (See Victim Resources section for more information on these projects).

The Arc of the U.S. has partnered with [SafePlace](#), a domestic violence and sexual assault crisis agency in Austin, Texas, to provide training and education on how chapters of The Arc can work with local victim assistance agencies and shelters in order to address the high rate of victimization among those with disabilities. The Arc has also developed fact sheets related to victims issues and, more specifically sexual victimization, to assist chapters in educating local victim assistance agencies about victims with disabilities.

Step Two: Educate yourself about victim services in your community and get to know victim advocates.

Many advocates in the disability field do not have a clear understanding about victim services and have not had the chance to create relationships with advocates in the victim services field. One of the first things you can do to prepare yourself to help Crime victims with intellectual disabilities is to begin building Good working relationships with staff at local victim assistance agencies.

Traditionally the victim service field and disability field have not worked together to address the high rate of victimization among this population. Parents of children or adults with disabilities and the organizations they are a part of (such as local chapters of The Arc or state Developmental Disability Councils) can form relationships with local victim assistance or child/adult abuse agencies, share each other's expertise and partner together to help children and adults with disabilities in their local communities.

One example of working together is to provide cross-training so that staff in both agencies have a better understanding of what each other does and the unique resources they have that can help a victim with intellectual disabilities. To find a victim assistance agency near you, see the Office for Victims of Crime web site at: <http://ovc.ncjrs.org/findvictimservices/> or contact your local police department or attorney general's office and request the victim services department.

DID YOU KNOW?

The Crime Victims with Disabilities Awareness Act, Public Law 105-301, was signed into law in 1998 and mandates the study about crimes against people with developmental disabilities. Advocates and members of The Arc can work to ensure that this law is fully implemented and that questions about people with disabilities be added to the annual National Crime Victim's Survey so that reliable data can begin to be gathered about crimes against people with developmental disabilities. To learn more, see <http://www.columbia.edu/cu/ssw/courses/2001-3/t6910/pl105-301tg/index.html> and http://www7.nationalacademies.org/ocga/laws/PL105_301.asp and http://www.aucd.org/legislative_affairs/CrimJustFact_Sheet.htm

Step Three: Learn about and be sensitive to the warning signs of victimization. Ask the person with a disability routinely about the possible presence of abuse.

Parents and others who care for children and adults with disabilities should get to know all persons working with their loved ones and observe interactions closely for any signs of abuse. If abuse does happen, further abuse may be prevented by asking the victim about it and keeping him or her safe by removing the individual from the situation. It's not unusual for parents and other caregivers to be the abusers, so other adults in the person's life should also be able to identify signs of abuse and know how to report it. It's equally important to ask about abuse routinely so that the victim has more than one chance to respond and disclose abuse.

A number of signs can be considered to help advocates recognize victimization (which can include physical wounds on the body, physical changes such as unexplained sore throats, gagging and abdominal pain, behavior changes or difficulties, changes in mood or sudden emotional problems). For more detailed information about identifying signs of abuse, see ["People with Intellectual Disabilities and Sexual Violence."](#)

Some general tips to keep in mind when victimization is discovered include the following:

- 1) Do not label all behaviors as "problems" but be willing to look into the reason for the behavior.
- 2) Use your intuition. If you have a gut feeling something is wrong you are probably correct.
- 3) Examine your own feelings and comfort level when working with victims with intellectual disabilities. If it is too hard for you to do alone, request assistance.
- 4) Remember that false disclosures are rare but can happen. Investigate the situation thoroughly then make a decision on what to do.

Step Four: Act decisively and promptly when victimization is discovered.

Some individuals with intellectual disabilities may disclose to you that they have been victimized. As with any victim of crime, consider the person's immediate safety needs and ensure the person has access to all necessary services. It may be helpful for your agency to develop an official agency policy on disclosure of victimization that can serve as a guideline, so that there is a plan in place on how to support people with intellectual disabilities and other disabilities in disclosing criminal victimization.

If the disclosure is a criminal offense, particularly one that has recently occurred, it's important to find out if the victim reported it to police. If not, the victim needs to know that delaying the report to police may destroy evidence and reduce the chances for successful prosecution if he or she decides to press charges in the future.

It's good to have a working knowledge of state statutes regarding what acts are considered criminal in your state. For example, some states have a "vulnerable adult" statute that covers people with disabilities while other states do not. In states that do not have a "vulnerable adult" statute, some

The American Bar Association's Commission on Mental and Physical Disability Law has a directory of attorneys specializing in various types of law relating to people with disabilities. As an advocate, you can use this resource to find lawyers in your area who may have expertise in assisting clients with intellectual disabilities. See the on-line directory at:
<http://www.abanet.org/disability/disabilitydirectory/home.shtml>

prosecutors may be willing to prosecute cases involving neglect or withholding of care if the result was physical harm to a person, regardless of whether the state has a vulnerable adult statute.

It is also important to know what the requirements are in your state for mandatory reporting to Adult Protective Services (APS). When making a report to APS, be sure to inform the crime victim of this requirement and offer the option for them to make a self-report as well. When making the report to APS, provide the intake worker with information on a safety time and place for conducting an initial interview/investigation with the victim so that the victim's safety is not further jeopardized by APS involvement. This is important because APS may also interview the alleged perpetrator and the perpetrator may further abuse the victim after APS concludes the interview.

Step Five: Provide treatment after victimization

Treatment options for crime victims with disabilities include standard and adapted psychotherapy for PTSD (Post Traumatic Stress Disorder), depression and anxiety. Other options include play therapy (for children with intellectual disabilities), behavior support services, family therapy, referral for other support services (support groups) and support services for significant others (school personnel, child care provider, etc.) Self-protection training and boundary role modeling are also helpful for people with intellectual disabilities to learn. Services that can be provided include crisis intervention, emergency resources, peer support, education and awareness training about victimization, self-advocacy and integrating the individual into already existing services. A helpful resource is the *Survivor Guidebook* written with and for sexual assault survivors who have intellectual disabilities (see Victim Resources section).

Finding a qualified, experienced counselor who is knowledgeable about both people with intellectual disabilities and about various traumas or victimization that occur in their lives is quite difficult and such professionals are rare. Contact your local victim assistance agency, mental health agencies and other disability agencies to search for qualified counselors. Consider using listserv groups, such as the [Can Do! listserv](#) and visiting other helpful sites, such as [CAVNET](#) and the [Victims of Crime with Disabilities Resource Guide](#) to find experienced counselors. Payment for the therapy can sometimes be obtained through victim witness programs, crime victim's compensation (if the crime was reported to the police), community mental health centers or developmental disability centers.

As the advocate, you should be familiar with some general qualities to look for in a qualified psychotherapist or counselor who will be working with the victim. For example, does the person:

- Have some training and experience working with people with this disability?
- Have some training and experience working with crime victims?
- Have a warm, empathetic, patient attitude?
- Seem comfortable with the person's disability?
- Use a holistic orientation to the person's therapy?

- Use adaptive methods and devices as needed?
- Have a willingness to work closely with other members of the person's treatment team

One important resource you can provide for those with disabilities is to have a safe time and place for them to tell their stories as much as they need to, which can be several times before significant emotional healing begins to take place, while others may prefer not to speak at all about their very painful and frightening experiences. Support groups for victims with intellectual disabilities who have been through similar experiences seem to be a very effective way to help individuals overcome the effects of victimization. If these groups are not available, encourage advocates from the disability and victim advocacy fields to work together to begin such groups. To learn more about support groups for victims with various disabilities and how they operate, contact SafePlace at <http://www.austin-safeplace.org> or (512) 267-SAFE. For information about support groups on domestic violence for people with disabilities, contact Portland State University at 503-725-4040 or IndependenceFirst in Wisconsin at 414-226-8381.

Step Six: Know how the Americans with Disabilities Act (ADA) applies to crime victims with intellectual disabilities

The Americans with Disabilities Act became law in 1990 and ensures that people with disabilities are not discriminated against based on the presence of a disability. As with most federal laws, it has taken time for the ADA to have a noticeable impact in all areas of a person's life. Improvement is needed in the criminal justice system, including the area of victim services. For more information about the ADA, see www.theada.gov

Some victims with intellectual disabilities are considered as not being credible due to having difficulty in communicating their experiences to law enforcement and others. However, they can provide credible testimony when provided with appropriate supports. Victims with disabilities must be able to file charges, report criminal activity or pursue any other legal action necessary in order to have an equal opportunity to protect themselves and protect their rights.

The victim rights system has eight stages. Each stage presents different challenges in providing services to crime victims with disabilities. Below are suggestions that disability and victim advocates need to know when assisting victims with intellectual disabilities.

Stage One: Emergency Response

Victim advocates should be aware of and sensitive to the possibility that a disability may exist. They can use various techniques to try to identify if the person has a disability (see The Arc's brochure written for law enforcement that includes tips on identifying if someone has a disability at <http://www.thearc.org/publications/officersguide.pdf>). Once the presence of a disability is known, the victim advocate can use simple accommodations in order to improve communication. Another accommodation often needed, but not available, is physical access to emergency shelters for victims with physical disabilities. Often, crime victims with physical disabilities are turned down for services simply because there is no way for them to get into the building. Victims also have the right to report or not report victimization and access to people who can help them figure out whether or not to report. There are resources the victim advocate should locate when

interviewing individuals with intellectual disabilities about victimization. For example, *“Interviewing Skills to Use with Abuse Victims who have Developmental Disabilities”* is an interviewing guide for professional abuse investigators that provides technical information about interviewing someone with intellectual disabilities. For more information, see Disability, Abuse & Personal Rights Project in the Victims Resources Section. Also, [Child Advocacy Centers](#) provide forensic interviewing for children and may be a good resource for victims with intellectual disabilities as well.

Stages Two & Three: Victim Stabilization & Resource Mobilization

Effective crisis counselors are very important in this stage because the sooner the victim can get help, the more quickly he or she can recover from the crime. Ongoing supportive counseling is also an important resource for the victim. However, as previously mentioned, there are few counselors who are skilled in and understand disability issues. Some may even be hesitant to work with victims because of their lack of experience or knowledge in working with people with disabilities. An example of an accommodation in this stage is to find a counselor who has experience working with people with disabilities or to request consultation from professionals or advocates who have been doing this work over a long period of time. If such counselors are nonexistent, begin training on disability issues with counselors in your community immediately (there are courses available on-line, see the Resources section). Psychotherapists can seek supervision to gain the skills, knowledge and attitudes required for quality service. In the meantime, a safe person who is trusted by the victim can attend counseling sessions with him or her in order to facilitate communication between the counselor and victim.

Stage Four: After Arrest

When there is an arrest, prosecutors become a key ingredient in the victim rights system and in the victim’s life. Prosecutors are rarely trained in disability issues and, therefore, frequently lack the ability to communicate with the victim effectively. Prosecutors must receive training on disability issues on a more consistent basis. One reason is to learn how to interview crime victims with disabilities before a court appearance. Certain accommodations can be used by the prosecutor during interviews, for example:

- Preparing the environment by limiting distractions and conducting warm-up interviews in a quiet room or location where the person feels safe
- Breaking down all questions/sentences into single thoughts. Choosing your words carefully
- Letting the victim “lead the interview” in the disclosure of information and asking open-ended questions
- Taking plenty of time for the interview and taking breaks (at least every 15 minutes)

Stage Five: Pre-Court Appearance

Often crime victims with intellectual disabilities are brought into the courtroom with no education or training on what will happen in court. Examples of accommodations in this stage include:

- Preparing the victim by methodically going over and over the court process (going to the courtroom and explaining who sits where and what each person’s job is)

- Explaining in simple terms what is going to take place, in order to prepare the person as much as possible
- Role-playing and rehearsing how to give the testimony

These strategies are also used with child victims. Although similar strategies are being done with adult victims with disabilities to some extent, they often do not have equal access to preparation information because it is not given in a way they can understand it.

Stages Six & Seven: Court Appearance & Before Case Disposition

On the day of the hearing or trial, the victim may experience great stress and fear about testifying. In order to help the person gain confidence in testifying, a support person should be permitted to sit near the witness during the testimony. If the witness does want a support person, the prosecutor should be told before the court date so arrangements can be made. A program in Vermont uses a “Communication Specialist” (that is similar to an ASL interpreter for someone who is deaf) which allows the person with a disability to communicate effectively with the attorney, judge, court staff and others in the judicial system. For more information contact the Vermont Communication Support Project at (802) 828-0030 or see their web site at:

<http://www.vtlawhelp.org/Home/PublicWeb/Library/Index/1840000/CourtAssist/index.html>

If the person is unable to testify in court, consider videotaping the testimony. Because there may be questions of competency of the witness, an expert witness who is familiar with disability issues should be available to provide guidance to the court and judge.

Stage Eight: After Case Disposition

After disposition, the victim may continue to be in contact with corrections agencies, victim advocates and prosecutors. The victim will have the opportunity to be notified of future hearings and to give input. Victim and disability advocates can provide accommodations by helping the person understand when the hearings are, what they are for and how to get there (or arrange for transportation to be provided).

Perhaps the most important thing family, friends and advocates can do is help the victim feel protected from further intimidation or harassment. The victim may continue to feel fear for a long time after the crime and having a disability can increase that fear. Friends and family can help by changing the person’s environment to make it feel safer and encouraging the person to go to counseling until their sense of safety returns (which may take awhile). The victim’s family/support system should be encouraged to behave normally (not pitying the person or focusing too much on the victimization) and allow the victim to speak freely about the abuse or not to discuss it at all, based on the individual’s need and preference. If the offense occurred on the job, the offender should be forced to change jobs, NOT the victim. Likewise, if the offense occurred at the person’s home, the offender should be forced to move, NOT the victim.

Advocates can help victims realize they did their part in bringing the offender to justice and be proud of the active role they took standing up against victimization and the offender’s criminal behavior. They can feel proud in knowing they helped prevent further possible victimization of other people. Through the healing process, they can learn how to make the transition from victim to survivor.

Responding to Arrest²

*Individuals with intellectual disabilities face disadvantages when coming in contact with the criminal justice system. This is a concern because more people with disabilities are imprisoned or on parole/probation compared to those without disabilities. **This does not mean people with disabilities are more likely to commit crimes**, but they are more likely to get caught if they become involved in a criminal act (they may or may not realize the act they are involved in is actually a criminal offense). Research in 1996 estimated the prevalence of intellectual disabilities among inmates in federal and state prisons at 4.2 percent. Similar studies conducted in other countries have found prevalence rates from 6 to 7 percent, making one finding consistent: those with intellectual disabilities remain over represented in the criminal justice system in the United States.*

The ADA applies not only to crime victims with developmental disabilities, but also to suspects/offenders. Examples of accommodations are provided throughout the following six steps outlining suggestions on how advocates can respond to an investigation or arrest. For more information about ADA accommodations for suspects/offenders, see “The Americans with Disabilities Act and Criminal Justice: Mental Disabilities and Corrections” at: <http://www.ncjrs.gov/txtfiles/amdisact.txt> or visit the Department of Justice’s website at: http://www.usdoj.gov/crt/ada/q%26a_law.htm. Video footage about police response to people with disabilities is available at: <http://www.ada.gov/policeinfo.htm>

Eunice’s Story

Eunice Baker, a woman with an intellectual disability, was sentenced to 15 years to life in prison for murdering a young child, despite evidence that the death was accidental. After nearly 5 years in prison, The New York State Appellate Court reduced her sentence to criminally negligent homicide, and she was released on time served.

When she was first brought in for questioning, Eunice, who did not understand her Miranda rights, signed a false confession. The document states that while babysitting young Charlotte Kurtz, Eunice intentionally killed the child by locking her in her bedroom and turning the thermostat up to 90 degrees on a hot June day. The defense in her trial claims that a short in the thermostat’s circuitry caused the sweltering heat inside the home, a fact that is confirmed by the sworn testimony of an electrical expert. Eunice’s lawyer also asserts that his client, due to her limited cognitive capacity (her IQ is between 65 and 78), did not realize that the heat posed a severe threat to the three-year-old child.

From day one, Eunice was tried in the media and found guilty. Not until the midst of the trial were any articles printed sympathetic to her, though evidence supporting her innocence had surfaced. With no audio or video recording of Eunice’s confession, jurors were forced to decide whether or not she possesses the intelligence to have understood her Miranda rights or realized that Charlotte was in danger. To watch a preview of the video, see <http://www.logtv.com/films/borderline/index>

² Information provided in this section was taken from “The criminal justice and human services systems: coordination handbook” (revised 2006). Thomas E. Scheinost, [University of South Dakota’s Center for Disabilities](#). Information was also taken from “Opening the door: Justice for defendants with mental retardation” & “Finding the path to equal justice” by [Texas Appleseed](#) (2005).

Step One:

Prevention – Provide Consistent, Accurate Training

Training and education for both law enforcement officials and people with disabilities can help prevent unnecessary stops, arrests, convictions and even wrongful executions. Law enforcement officers and court personnel often have little or no understanding about what intellectual disabilities are or why it's even important to learn about it. People with disabilities may not understand the dual role of a police officer and, consequently, may admit to something they didn't do out of pressure or fear of authority. Or they may have never been told that there are certain behaviors that can get them arrested. In order to help police officers better identify people with intellectual disabilities, offer to train the department or consider including intellectual disabilities in their existing training program. Make sure that if training on this topic is already being done that the information being taught is up-to-date and accurate. Some older curricula still being used can be misleading to officers and do more harm than good. Also, make sure training is provided on a consistent basis so that new recruits have an opportunity to learn about people with intellectual disabilities, and that seasoned officers are reminded about the information throughout their police careers.

Some state and local chapters of The Arc already provide training regularly to their local police departments and to people with disabilities, and have done so for years. For example, [The Arc of Tennessee](#) has been providing training to officers throughout the state, as well as [The Arc of New Jersey](#), [The Arc of New Mexico](#) and [The Arc of Riverside](#) in California. Some chapters have statewide programs, while other chapters are new to this area of prevention and advocacy, and are just beginning to build working relationships with their local police department. See Resources section (Justice Advocacy Programs within The Arc) for more information.

Step Two:

Investigation - Help the Officer/Investigator Identify and Better Understand the Person's Disability

When someone is suspected of committing a crime, an investigation of those allegations may follow. This stage poses the greatest threat to the person with intellectual disabilities for two reasons. First, many times the disability is not recognized. Police officers and court officials often do not realize that a majority of those affected by intellectual disabilities are mildly affected (approximately 88%) and will not readily appear as having a disability. For that reason, a number of "checklists" have been created to help officers identify the presence of a disability. For example, an officer can find out if the person:

- Refers to a caseworker/staff/friend at a center or group home
- Receives SSI
- Has an ID that provides a phone number to call
- Appears too open to being led by others or too eager to agree or please the questioning officer
- Has difficulty communicating events in his or her own words (without parroting or mimicking responses)

- Seems overly awed or intimidated by the police uniform, badge, gun, etc.
- Seems to agree to everything asked of him or her

It's important for the officer to ask the person for an ID since he or she may carry one providing a phone number which the officer can call. Some states have created registries where family members voluntarily provide essential and confidential information about a person of any age with disabilities and a photograph to the local sheriff's office or police department. This is helpful for the suspect and saves the officer time as well.

During the investigation stage, advocates and resources are the most needed since they have the power to affect the outcome of the suspect's case. The sooner the police and court system learn about the disability and its impact on the situation, the more likely a better outcome can be obtained. As advocates, it is important that you already have made contact with the local police department and court system in order to provide valuable input in a way that is heard and respected when someone you know is suspected of criminal activity. ***The most critical thing to remember during this stage is to make sure individuals with the disabilities have a support person who is familiar with them and their disability to help before and during this stage.*** So often, suspects with developmental disabilities have no advocates (or they get one too late after an investigation has begun) and therefore miscommunications or other misunderstandings leave them without a fair and adequate way of defending themselves. Advocates should have a basic understanding of the criminal justice process or find someone who can help navigate them through the process effectively.

Step Three:

Arrest and Charge - Provide a Support Person and Get to Know the Attorney As Soon As Possible

At this point, the suspect is formally arrested and charged with the specific crime. It's important for advocates to realize that defense attorneys, like law enforcement and court officials, often fail to recognize intellectual disabilities. And even when the disability is noticed, attorneys are not familiar with the special procedures and laws that apply to persons with intellectual disabilities, and are not familiar with special procedures that can divert such clients away from the criminal justice system.

For this reason, it is important to find an attorney who is familiar with intellectual disabilities to represent the accused. See the American Bar Association's Directory of Attorneys at:

www.abanet.org/disability/disabilitydirectory/home.shtml for a list of attorneys in your area who may have some experience in assisting clients with intellectual disabilities. Attorneys on the list who specialize in a specific area of

A NOTE ABOUT MIRANDA RIGHTS

It is during this stage when suspects are read their Miranda rights. For most people with an intellectual disability, the reading of these rights will have little meaning and more than likely be misunderstood. ***If the suspect has had no advocate or support person up to this point in being detained, it is absolutely critical that an advocate be present now so that when the Miranda Rights are read the advocate can find out if the suspect really does understand the meaning.***

Once the person says he or she understands the Miranda rights, formal questioning can proceed, leading to possible false or coerced confessions. Remind the suspect to not talk to anyone or sign anything until they have spoken with their lawyer and another trusted person about the situation (family member, friend, staff person, etc.).

Those with intellectual disabilities cannot understand the abstract meaning of critical terms due to having concrete thinking. For example, some may think they are being asked to "wave" at the right rather than at the wrong, and nobody would wave at the wrong in a police station! Some may think that "rights" is the opposite of "lefts" when asked if they agree to waive their rights.

disability law (like unemployment or the ADA) may not be able to help, but they may know of other attorneys in your area who can assist.

You should also consider contacting your [state protection and advocacy agency](#) (also referred to as the P&A) for referrals of attorneys with experience working with individuals with disabilities.

If it is not possible to find an experience attorney, whether the person is a public defender or paid attorney, your role will be to educate him or her about intellectual disabilities and provide any assistance you can to provide the best defense possible for the individual. The suspect must meet certain financial eligibility criteria in order for a public defender to be appointed to his or her case (states vary on this criteria).

In order to create a good working relationship with the attorney, establish communication with the lawyer from the beginning of the case, before any court appearances take place. Provide any and all information you have about the suspect with a disability to the attorney (health history, school history, job history and any previous problems with the law). Provide copies of medical records, assessments of developmental disabilities, hospital records and the names and numbers of doctors and caseworkers.

If the attorney does not return your phone calls, send a letter (certified, return receipt requested) reiterating attempts to contact him or her and describe the information you need or what you would like the attorney to know about the suspect. Offer to provide any assistance to help the attorney better understand the disability. Consider asking a third party (an advocate from another disability agency or chapter of The Arc) to make a phone call to offer assistance on the case as well. Stay involved in the case and let the attorney know you are not going away and want to know all upcoming court dates so you can attend.

**CAUTION:
SIMPLIFIED MIRANDA**

Some advocates suggest that investigators and officers use what is called a “modified Miranda warning” in order to make the meaning easier to understand. However, it should be used with caution because the underlying meanings within the warning are often not understood, even when put into simpler terms and patiently read by well-meaning officers. Most advocates agree that, to be on the safe side, the accused request an attorney before saying they understand their Miranda rights.

Step Four:

Custody – Ensure the Person’s Safety and Provide Emotional Support

The [State Protection and Advocacy Agency \(P&A\)](#) can help advocates find out what an inmate’s rights are once the person is in jail or prison, how to get medication to them, what to do if the person may be in danger and how to restore SSI and other benefits.

After arrest, the suspect is taken into custody (i.e., jail or detention). The advocate can let attorneys and jail personnel know that the suspect has a disability and the dangers the person may face if he or she is not placed in a protective setting. Individuals with developmental disabilities may have problems communicating their needs regarding medication, communication assistance devices or physical problems and the jail staff is often not prepared to meet those needs.

If the person’s disability is still undetected, the advocate can present evidence of the presence of intellectual disability and give ideas on how to ensure the person’s protection while in custody. At this stage, advocates

may want to seek alternatives to incarceration depending on the seriousness of the alleged offense.

The person may not have the ability to obtain bail so he or she will often remain in jail with no outside support. If the person is confused and frightened, the advocate can play a big role by calming fears and providing emotional support. Cooperative efforts within the community between law enforcement and disability service providers and advocacy organizations could develop a system of outside advocates to consult with police or jail officials during this period of detainment and before charges are filed.

Step Five:

Pre-Trial – Know Your State’s Laws on Competency, Ensure the Right Professionals Conduct Testing and Consider Diversion from Court Proceedings

This stage involves the attorneys, both prosecuting and defense. The suspect’s case will be handled in 4 ways: 1) plea negotiations, 2) defendant is judged mentally incompetent to stand trial, 3) defendant is placed in community treatment or training program without prosecution or 4) the defendant is released. As the advocate, it is of utmost importance that you work as closely as possible with the attorneys in order to educate them about what it means to have this disability and how it impacts the person’s life, especially with regard to the alleged criminal activity.

You will need to become familiar with your state’s law on competency to stand trial since this issue is determined pre-trial by the court. In some states, an individual who is incapable of appreciating the wrongfulness of his or her act when it was committed will not be punished (this is known as diminished capacity). It’s also important to realize that although a person may be found incompetent to stand trial, this does NOT mean he or she will likely be released and able to return home. Depending upon the seriousness of the alleged crime, the person may be sentenced to a mental institution or forensics unit for an indeterminate period of time (waiting to “regain” competency), and some individuals are never released.

Make sure that testing regarding competency and any other issues is conducted ***only by experienced professionals who are in the intellectual disability***

field (not by those whose expertise is only in mental illness). Also, make sure the tests that are being used are specifically designed for use by people with developmental disabilities. Often the criminal justice system turns to psychiatric facilities or psychiatrists with no training in mental retardation for testing which can produce inaccurate test results.

The CAST-MR (Competency Assessment to Stand Trial for Defendants with Mental Retardation) is an often used instrument that assesses the competence of persons with mental retardation to stand trial. It measures the person’s ability to understand basic legal concepts, their skill level to assist in their defense, and their understanding of case events. The examiner reads each question aloud and records the client’s response in a booklet. There is a reusable subject form that allows the client to follow along as the examiner reads the questions. For more information, see: www.idspublishing.com/cast.htm

You can help the attorney develop alternative diversions from court proceedings if the charges are not too serious and the court will allow this. The possibility of diversion from court depends on the knowledge the attorney has about people with intellectual disabilities and his or her awareness of community resources. Find out as much as you can about treatment or training programs available in your area and provide a list of these to the attorney.

You can also help the attorney in communicating with the suspect and making sure the suspect understands what is happening with his or her case. If you have not already done so in Stage Three, you can assist by obtaining as much information on the defendant as possible (including the person's school records, interviewing the defendant's service provider, family members, friends, etc).

Step Six:

During Trial – Assist with Pre-Sentence Evaluation, Seek Out the Right Expert Witnesses and Advocate for the Use of ADA Accommodations

The advocate should ensure that the attorneys have all the information they need since lack of important information at this stage will make it difficult for a suspect with a disability to receive fair treatment in court. Also at this stage, a pre-sentence investigation report is made and given to the trial judge if a plea was entered, or upon conviction. The advocate should assist the court staff in completing the pre-sentence investigation. This encourages cross-training and communication between the disability and legal service systems. The pre-sentence report should include a list of programs/placements for the suspect as an alternative to a jail/prison sentence. As a preventative measure, you can assist the court by providing a list of placements and making this available to the court staff making the pre-sentence investigation (see Step Seven for more information on alternative placements).

Seek out expert witnesses who have particular expertise in intellectual disability (i.e., FAS, fragile X syndrome, etc.) as opposed to those whose expertise focuses on mental illness issues. Contact your state chapter of The Arc or The Arc of the U.S. for help in identifying such experts.

Educate the court about the ADA (Americans with Disabilities Act) and its requirement to provide fair and equal treatment to people with developmental disabilities. Some accommodations in this stage may include:

- Familiarizing the person with the courtroom to prepare him or her for trial
- Allowing the person's testimony outside of the courtroom
- Tape recording the testimony
- Allowing a support person to accompany the person during trial
- Allowing the person frequent breaks
- Using closed circuit TV instead of having the person physically attend the trial
- Providing information about the case on audio tape so the person can better understand the proceedings
- Provide easy to understand information about court notices or court forms in larger than 12 point font, and provide assistance with completing any documents needed by the court (Luckasson & Vance, 1995).

Step Seven:

Disposition After Trial – Advocate for A Safe Placement, Provide a List of Alternatives to Incarceration, Advocate for More Programs within Your State

If the person is found guilty, disposition is the final stage of the criminal justice process. The person may receive probation, financial or community service sanctions, incarceration in either a county jail or state prison, or alternative placement for specialized treatment. Placements are often decided based on level or risk, medical, mental health and programming needs. The advocate plays a very important role during this stage in advocating for the most effective and safest placement possible for the individual.

Alternative placements or programming are often in community disability facilities or within other non-profit programs, such as Volunteers of America, who provide housing for specialized treatment programs. Call your county's mental health system to find out if such programs exist or are in the process of development. Programs may be funded through the county mental health department or local or state law enforcement, or jointly funded through a number of community agencies. Those seeking treatment and/or placement must travel out of state in order to obtain necessary services since so few exist for defendants with intellectual disabilities.

Some communities have programs/placements designed specifically for individuals with intellectual disabilities who commit sexual offenses. [The Safer Society Foundation, Inc.](#) (phone: 802-247-3132) maintains the only computerized nationwide database of agencies, institutions, and individuals that provide specialized assessment and treatment of juvenile and adult sex offenders. This is a good starting point for advocates looking for programs for people with intellectual disabilities accused of sexual crimes.

[The Arc of New Jersey's Developmentally Disabled Offender's Program](#) provides a good example of how important alternatives to incarceration can be for those entering the system. Their program develops "Personalized Justice Plans" or PJPs on behalf of defendants with intellectual/developmental disabilities. The PJP is presented to the court as an alternative to incarceration. It emphasizes the use of the least restrictive community-based alternatives to incarceration as early as possible in the criminal justice process, while holding individuals accountable for their behavior. Through its intervention, the DD Offender's Program helps to overcome the criminal justice system's lack of understanding of intellectual or developmental disabilities by 1) providing technical assistance to attorneys who represent people with disabilities and 2) creating an advocacy letter and PJP to educate the criminal justice and human services systems about disabilities, the disadvantages faced by this population and how appropriate community supports can address their habilitative needs.

The main challenge in this stage is finding an alternative placement, which can be very difficult, if not impossible, since there is a serious lack of specialized programs available in most communities and states. Chapters can educate their state legislators about the need for specialized programs developed for people with intellectual disabilities and advocate for the funding of more placements.

Commonly Asked Questions

While it is impossible to make this a comprehensive list of all possible questions received on victim and offender issues, these are some of the more common inquiries received by local and state chapters of The Arc and The Arc of the U.S.

SUSPECTS/OFFENDERS:

Q: *I'm a person with an intellectual disability. What are my rights if I'm suspected of committing a crime or getting arrested?*

A: There are helpful web sites, brochures and curricula you can use to help educate yourself about criminal justice issues if you are suspected of committing a crime. Ask a friend or parent to help you get information from the internet. See The Arc's web site at <http://www.thearc.org/criminaljustice.html> for fact sheets and download the brochure "Know Your Rights if You Get Arrested" at <http://www.thearc.org/publications/>. Or, you can also contact [The Arc of New Jersey](#) to obtain their brochure "What You Need to Know if You Are Arrested." You can contact your local Bar Foundation or Association to get brochures about the court system too. You can also contact your [State Protection and Advocacy Agency](#) to know what your rights are if you are arrested and sentenced to jail or prison.

Q: *My son who has an intellectual disability was accused of sexually molesting our next-door neighbor's little girl. How can we help the court understand how his disability affected his actions; that his act was more out of ignorance, rather than being sexually driven?*

A: It's important to see your role as educator, because many times court professionals have no experience or understanding of disabilities and how it affects a person's actions. Professionals need to understand that those with intellectual disabilities are sexual and do have sexual drives, but are no more likely than someone without a disability to be overly sexual. The problem often occurs because they lack private places to be sexual, or they were never taught the appropriate ways to be sexual. Or they may engage in "age discordant sex play" where the age difference between the two people involved creates the concern. Education and guidance is often the appropriate response, not jail time. Gather any articles, research and information about this topic from local disability agencies and provide this to the professional. Provide information on programs specifically created for sex offenders with intellectual disabilities as a possible alternative to sentencing. You can obtain this information from your local or state chapter of The Arc or The Arc of U.S. (see The Arc's fact sheet "[People with Cognitive, Intellectual and Developmental Disabilities and Sexual Offenses](#)"). Offer to meet with the legal team and to provide any assistance they may need with the case.

Q: *I'm a parent of a 16 year old boy with FASD (fetal alcohol spectrum syndrome) who was in a fight at school recently. In addition to the disciplinary actions at school, he was charged with assault. I got a lawyer, but he doesn't understand my son's disability, what should I do?*

- A: Provide the lawyer with a copy of your son's Individualized Education Plan and any recent evaluations that elaborate on the nature of your son's disability. In addition, provide fact sheets about what FASD is and how the disability impacts your son's behaviors and attitudes. Include fact sheets about people with FASD involved in the criminal justice system from [NOFAS](#) (National Organization on Fetal Alcohol Syndrome), the *University of Washington's School of Medicine's Fetal Alcohol and Drug Unit* (<http://depts.washington.edu/fadu/legalissues/lawarticles.html>). Also, see the web site, "*FASD in the Court System*" by Teresa Kellerman (<http://www.come-over.to/FAS/Court/>) for additional ideas when working with the attorney.
- Q: *I'm a case manager and advocate. A person with intellectual disabilities was recently arrested and is in the county jail. I've heard how abusive and dangerous it can be in jail settings. What can I do to protect the person from being abused while in jail?*
- A: Ask the person for your permission to tell the jail social work department about the disability. Request that the individual be placed in the medical unit or in protective custody due to having a disability. This is considered to be a routine accommodation provided to inmates according to Title II of the ADA.
- Q: *My adult son with disabilities was paying fines towards a traffic offense, but is no longer able to pay those fines because he is now in inpatient drug treatment. The last time this happened, a bench warrant was issued and he got in even more trouble. What can I do to help prevent the judge from issuing a warrant for failure to pay fines?*
- A: Contact the jurisdictions where the fine is repaid. Advise the court administrator that your son cannot make payment because he is in inpatient drug treatment. The court administrator will probably request a letter or other documentation that proves the admission date and that your son is still in the program. If a bench warrant has already been issued, ask the court administrator what other documents need to be provided in order to have the warrant rescinded. Don't forget to tell your son to contact the court administrator as soon as he is out of treatment so he can continue his fine repayment.
- Q: *I'm a supervisor at a group home and a police officer is on his way to talk to one of our residents with an intellectual disability about an incident they are investigating. What should I do?*
- A: Advise the person with the disability that the police officer is trying to solve a crime. This means the person the officer wants to question could be a suspect. If so, the person should be told to ask for a lawyer before answering any questions. Explain that the officer will want to read the Miranda rights to the person, but explain to the possible suspect that the Miranda warning can be hard to understand and he or she should say "I want a lawyer" when and if the Miranda rights are read. Let the officer know about the person's inability to understand the Miranda warning, and do not leave the person alone with the officer or investigator at any time. False or coerced confessions are not

uncommon among suspects with intellectual disabilities, and they usually happen when the person has no other advocate or support person present at the time of questioning.

Q: *I work at a local chapter of The Arc. One of the self-advocates we serve was just arrested after he was found with a small amount of crack cocaine and a pipe. He was charged with Possession of a Controlled Dangerous Substance. We were unaware of his drug use until this arrest. He does want to get help for his addiction, and the lawyer said that if we can find treatment that he can be released from custody. We want to help this person find the treatment he needs, but don't know where to look.*

A: You can start with your state's Division of Addiction Services or County Addiction Services Agency. Use the SAMHSA web site (www.samhsa.gov) to search for providers in your area and get general information about what types of services are available to treat this individual's addiction. Since the substance abuse treatment provider may not be educated about how to work with people with intellectual disabilities, provide assistance such as education, practical tips, and resources. Contact the National Association on Alcohol Drugs and Disability at www.naadd.org for technical assistance.

Q: *I'm an advocate assisting an attorney who is defending a man with a mild intellectual disability. The suspect is facing a possible death sentence, and if found to have a disability, could be spared the death penalty. How can we prove to the jury/judge that the defendant has a bona fide disability and is not just faking it?*

A: It's important to get as much documentation as you possibly can regarding the defendant's disability and age when the disability occurred (the age of onset must be before age 18 in order for the disability to be considered "mental retardation"). Examples include obtaining school records that may reveal a history of attending special education classes, obtaining past psychological evaluations and birth records that may indicate complications at birth resulting in intellectual disabilities, looking into the defendant's history of health care and seeing if poor environmental stimulation occurred that may have contributed to the disability. Family members and friends should be interviewed so that corroborating evidence can be given to the court to further prove that the defendant has a legitimate disability. Provide documentation of receiving SSI payments, find out if the person works in supported employment or lives in a group home setting and find out if he or she has a case manager. Remember, expert testimony must be given ONLY by those who are qualified to do so. The psychologist who administers psychological testing should have experience specifically in the field of intellectual disabilities.

Q: Will disability checks stop when a person is in jail or prison?

A: If the person receives both SSI and SSDI, the SSDI payments will stop after 30 days of incarceration following conviction, but the SSI payments will continue until the person has been in jail or prison for a full calendar month. For more information about what happens to benefits if a person with a disability goes to jail or prison, see the publication "Arrested? What Happens to Your Benefits If You Go to Jail or Prison" (Feb. 2004) at www.Bazelon.org.

Victims:

Q: *I have a disability and I've heard that because of my disability, I am at greater risk of being hurt. What can I do to protect myself?*

A: You can do a lot! The most important thing you can do is learn more about the different types of abuse and how to tell when you're in danger BEFORE violence or abuse happens to you. You can also learn what your rights are if you become a victim, so that you can do something about it if you get hurt. There are 3 main types of abuse – physical (for example, getting hit or kicked), sexual (for example, getting touched where you didn't want to be touched or being raped) and emotional (being talked to in ways that make you feel bad). Ask a parent, caseworker, or friend how you can learn more about keeping yourself safe. Give them this Guide and look in the Resources section for curriculum that teach safety skills.

Q: *What can I do as a parent, friend or advocate to help keep my child, friend, client safe?*

A: You can make sure that your loved one is getting the education he or she needs. Safety skills must be provided on a consistent basis, along with self-determination and relationship-building skills, so the person can learn how to develop **safe** relationships. Advocate for classes on sexual violence that teaches individuals how to respond and protect themselves when they become sexual assault victims (see the Resources Section for more information). Learn the warning signs that can signal when abuse is happening or has happened. Advocate for employment policies to change so that background checks on all employees (new and long-term) are done on a routine basis. As an advocate, you can educate yourself about issues specific to victims with disabilities. For more information, see the National Office for Victim's Assistance article at: <http://www.trynova.org/victiminfo/ovc-disabilities/>.

Q: *My daughter/son was raped at her group home by a staff member, who is the first person I should call to report this?*

A: It's very important to call the police as soon as possible so that important evidence can be collected in order to have solid evidence if and when the case goes to court. Make sure the official who responds interviews the victim and issues a police report. It's important to keep notes on the crime that happened, including the date, time and the location. Other important information includes: 1) The name of the law enforcement officer or protective agency worker who responds, 2) The report or case number, 3) The name of the prosecutor assigned to the case, 4) The name of any victim advocate who works with the victim, 5) The names of any programs the victim is referred to, along with their phone numbers and any other information that seems important. Writing this information down will help the victim remember important details, and will provide a "paper trail" of everything the victim did to act as a self-advocate or that a service provider did on the victim's behalf.

Q: *What is victim support/advocacy? How can it help my family member with disabilities who has been victimized?*

- A. Victim support services may include reimbursement for costs incurred as a direct result of the crime, including medical bills, psychotherapy bills, funeral expenses, and lost wages. Crisis intervention is often provided, as well as counseling and emergency shelter when needed. The Office for Victims of Crime funds state agencies within the U.S. to provide victim services. To find a victim assistance program in your state see:
<http://www.ojp.usdoj.gov/ovc/help/links.htm>
- Q: *My niece was sexually assaulted. When she was interviewed a few days later, she was not allowed to take in the notes she had made about it, even though she has FASD which causes short term memory. Doesn't the ADA say that accommodations must be provided due to her disability?*
- A. Yes, according the Americans with Disabilities Act, persons with disabilities should be provided accommodations unless it presents an "undue burden." Police departments are not required to take any step that would impose undue financial and administrative burdens. The "undue burden" standard is a high one. For example, whether an action would be an undue financial burden is determined by considering all of the resources available to the department. If providing a particular auxiliary aid or service would impose an undue burden, the department must seek alternatives that ensure effective communication to the maximum extent feasible. Obviously, your niece's desire to take her notes to the interview posed no undue burden to the department. You can report the violation of the ADA to the police chief and your state's ADA enforcement agency or you can make a toll-free call to the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Q: *I reported my child's sexual assault to the police, but they never even interviewed her. What can I do?*
- A. Call the investigator in charge of your child's case and ask why she was never interviewed. The investigator may have thought it was pointless to try the case in court due to your daughter's disability. It is your role as the advocate to educate the investigator and his or her supervisors, and all those involved in your daughter's case about the interviewing techniques that can be used and other strategies that should be considered in order to provide as strong a case as possible in court. Advise them to view "Victims with Disabilities: The Forensic Interview" which comes with a comprehensive training guide, available from The Office for Victims of Crime at
<http://www.ojp.usdoj.gov/ovc/>.
- Q: *My daughter came home to visit and said she was raped by a fellow housemate with intellectual disabilities three weeks ago. I have asked that the group home call police, but the staff say the sexual encounter was consensual and that it is was too late to get any physical evidence anyway. What does consent mean in regard to sexual assault? How can consent be determined?*

A: Sexual violence or assault is defined as any activity that is attempted or completed without the person's consent. Some people considered unable to give consent under the law include anyone under a certain age (usually between 13-14), people who are drunk or high, people who are asleep or comatose, and people who have a cognitive disability which makes them unable to give consent (for example, a person with profound mental retardation/developmental disabilities). Defining legal consent to sexual activity is difficult, and states use different tests to determine consent (for example, the majority of states base a determination of consent on the person's understanding of the sexual nature of any sexual conduct and the voluntary aspect of such activity). AAMR proposes 3 helpful standards of legal consent supported by most advocacy groups: 1) Knowing relevant facts concerning the proposed activity, 2) having the ability for rational processing of the risks and benefits of such behavior, and 3) understanding the voluntary nature of the action. Some tools are available to help determine consent, such as the "Forensic Assessment of Consent to Sex" available for \$10.00 at <http://disability-abuse.com/products.htm>

Q: *I work for a chapter of The Arc and recently one of the women we serve experienced domestic violence. We tried getting her into a local shelter, but they refused her entry due to not having "appropriate resources" to help. What should we do now?*

A: You can educate the shelter administration and staff about the Americans with Disabilities Act and give them information about how to make their shelter accessible to women with disabilities. The agency can adopt an ADA Compliance Policy that describes the agency's intent and commitment to meet the mandate of the ADA. You can offer to assist them in developing such a policy or put them in contact with agencies who can help them. For example, SafePlace, a domestic violence agency in Texas, has created numerous training guides and materials to help victim assistance agencies reach out to victims with disabilities and ensure that their services are accessible. (See http://www.austin-safeplace.org/site/PageServer?pagename=program_disability for more information). In the meantime, you can offer guidance and support as they provide services as best they can until meeting full compliance in order to avoid any citations for violating the ADA.

Q: *A number of abusive acts have happened at the facility where my child is living, and it has grown worse over the past five years. It seems I'm the only parent concerned about this, where should I go to file a complaint?*

A: It's good to start by contacting your local disability advocacy agencies to see what, if anything, they are doing about the problem and how you can begin advocating with them to bring awareness to what is going on at the facility. To help ensure your child's immediate safety, you can place cameras or remote viewing equipment in your adult child's room (this does not violate privacy regulations and can increase his or her safety). You can also contact your state [Protection and Advocacy system](#) to see if they are aware of the issue and what legal action they have taken and you can file a complaint with the [U.S. Department of Justice Civil Rights Division](#).

Justice Advocacy Programs within The Arc

Note: Chapters of The Arc listed have established projects which operate on an ongoing basis, or chapters whose project has time-limited funding. Many chapters are not listed here, even though they do provide assistance or services for victims and suspects with developmental disabilities on a case-by-case basis as they are able.

Offender/Defendant Programs

The Arc of the Capital Area

2818 San Gabriel
Austin, TX 78705
(512) 476-7044

e-mail: information@arcofthecapitalarea.org

web site: www.arcofthecapitalarea.org/thearc/index.html

The Arc provides *juvenile justice services* which serves Special Education students ages 11-17 that are involved in the criminal justice system. Staff provides light case management and attends ARDs and court hearings. Goals of the program are that the student graduate high school and not recommit crimes.

The Arc of Colorado

Contact: Nora Earnest
8000 East Prentice Avenue, Suite D-1
Greenwood Village, CO 80111
(303) 864-9334 or Toll Free (800) 333-7690

<http://www.thearcofco.org/criminaljustice.html>

The Arc of Colorado has developed a statewide training and information/referral program designed to educate criminal justice officials about individuals with developmental disabilities. In 2003-04, The Arc of Colorado succeeded in training over 750 criminal justice officials from over 55 different criminal justice offices.

The Arc of New Jersey's DDOP – Developmentally Disabled Offenders Program

Contact: Juan Santiago
985 Livingston Ave.
North Brunswick, NJ 08902
(732) 246-2525

www.arcnj.org

The Developmentally Disabled Offenders program is the only one of its kind in New Jersey that provides alternatives to incarceration on behalf of individuals with developmental disabilities who are defendants in the criminal justice system. The program serves as a liaison between the criminal justice and human services systems, and monitors the quality of care and service provided to those with developmental disabilities as they move from one system to another. Its continuing challenge is to investigate how the linkages between these two systems can be established, strengthened and maintained. It provides “Personalized Justice Plans” or PJP’s to the

court on behalf of suspects and offenders with developmental disabilities in order to provide the best sentencing options for the individual, and diversion from the criminal justice system.

The Arc of New Mexico's Justice Program

Contact: Robin Cash

3655 Carlisle NE

Albuquerque, NM 87110

(505) 883-4630 or 1-800-358-6493

<http://www.arcnm.org/index.php>

http://www.arcnm.org/index.php/news_events/article/46/ (information about their project related to serving victims of abuse/crime)

The Arc of North Carolina

Contact: Marian Hartman or Ann Elmore

Web site: http://www.arcnc.org/services/pij/index_txt.shtml

(919) 234-9298 or (919) 772-7803

The "Partners In Justice" project is a statewide collaborative effort that provides training to justice system professionals and human service workers about people with cognitive disabilities. They also train people with cognitive disabilities and their families on what to do if they become involved with the system as a witness, victim or offender. The project created a Juvenile Justice Committee which is developing materials on the juvenile justice system for the targeted audiences mentioned above.

The Arc/Pikes Peak Region Special Offenders Coalition

Contact: Teddi Roberts

12 North Meade

Colorado Springs, CO 80909

(719) 471-4800

<http://www.thearcppr.org/>

The Arc provides judicial advocacy and believes in due process and educating the judicial system and individuals with intellectual disabilities about their rights and responsibilities toward one another.

The Arc of the U.S.

Contact: Leigh Ann Davis

1010 Wayne Ave., Suite 650

Silver Spring, MD 20910

(817) 277-2236

<http://www.thearc.org/criminaljustice.html>

The Arc of the U.S. provides informational fact sheets on both offender and victim issues for chapters, is involved in federally-funded justice related projects, provides technical assistance to families and other advocates, and develops position statements related to criminal justice and disability issues.

Victim Programs

The Arc of Aurora

Contact: Darla Stuart, Executive Director
1342 South Chambers Road
Aurora, CO 80012
(720) 213-1420
email: Arcaurora@aol.com

Through their “Project Illumination,” The Arc is educating others about the impact of sexual violence on people with developmental disabilities. They are training other chapters of The Arc throughout the country about how to successfully replicate and implement Project Illumination in their jurisdictions.

The Arc of North Carolina

Contact: Marian Hartman or Ann Elmore
Web site: http://www.arcnc.org/services/pij/index_txt.shtml
(919) 234-9298 or (919) 772-7803

The “Partners In Justice” project is a statewide collaborative effort that provides training to justice system professionals and human service workers about people with cognitive disabilities. They also train people with cognitive disabilities and their families on what to do if they become involved with the system as a witness, victim or offender. The project created a Juvenile Justice Committee which is developing materials on the juvenile justice system for the targeted audiences mentioned above.

The Arc of Riverside

Contact: Jim Stream
8138 Mar Vista Ct
Riverside, CA 92504-4324
1-888-818-6298
<http://www.arcriverside.org/justice.html>
<http://www.arcriverside.org/abuse.html>

The Arc Riverside received a 3-year grant in 2001 to make significant changes throughout the State of California to improve the handling of abuse cases affecting individuals with intellectual disabilities. The project is called “Child Abuse and Neglect – Disability Outreach! (CAN/DO!), see web site at: www.disability-abuse.com. They have developed and provided training on forensic interviewing and created an on-line training course, and also have downloadable PowerPoint presentations and fact sheets. They operate a listserv of more than 900 professionals and advocates.

The Arc of the U.S.

Contact: Leigh Ann Davis
1010 Wayne Ave., Suite 650
Silver Spring, MD 20910
(817) 277-2236
<http://www.thearc.org/criminaljustice.html>

The Arc of the U.S. provides informational fact sheets on both offender and victim issues for chapters, is involved in federally-funded justice related projects, provides technical assistance to families and other advocates, and develops position statements related to criminal justice and disability issues.

Victim Resources

NOTE: *The purpose of this list is not to provide the most comprehensive list of resources, but to provide the most up-to-date and easily accessible resources targeted specifically to self-advocates, parents and other advocates. A number of these resources and others can be found on-line at:*

Victim-Related Web Sites

Victims of Crime with Disabilities Resource Guide

<http://wind.uwyo.edu/resourceguide/>

The Resources Database or Guide contains information on products and services focused on victims of crime with all types of disabilities.

ICAD-L

<http://www.ualberta.ca/~jpdasddc/abuse/ICAD/>

ICAD-L is an electronic mail network on the topic of abuse & disability established in October of 1993. Subscribers include researchers, clinicians, people with disabilities, parents, and others interested in this topic. ICAD messages are updated daily.

CAVNET

<http://www.cavnet2.org/>

CAVNET started as a diverse network of professionals and advocates working in the areas of domestic violence, stalking, sexual assault, and rape. It is an information sharing network that includes many areas, including violence between gay and lesbian partners, violence against persons with disabilities, and school violence among others.

Help for Victim Service Providers

http://ovc.ncjrs.org/ovcproviderforum/asp/sub.asp?Topic_ID=32&Topic_Desc=Crime+Victims+with+Disabilities

A message board from the Office for Victims of Crime (OVC) that helps individuals exchange lessons and practices in victim services.

Quality Mall: Justice & Victimization

<http://www.qualitymall.org/directory/dept1.asp?deptid=45>

This site contains resources, projects, services, programs, and supports that assist persons with developmental disabilities who are victims, witnesses or suspects within the criminal justice system.

National Clearinghouse on Abuse in Later Life

<http://www.ncall.us/resources.html>

The Wisconsin Coalition Against Domestic Violence created the National Clearinghouse on Abuse in Later Life (NCALL) in 1999 with funding from the Department of Justice's Office on Violence Against Women. NCALL has been the nationally recognized leader on program development, policy and technical assistance and training that addresses the nexus between domestic violence, sexual assault and elder abuse/neglect.

AdvocateWeb

<http://www.advocateweb.org/hope/abuseofpersonswithdisabilities.asp>

A non-profit organization providing several links to articles, reports, etc. related to abuse and exploitation of people with disabilities.

Victim-Related Resources

Blue Tower Training Center

Contact: Shirley Pacey

2121 Hubbard Ave.

Decatur, IL 62524

(217) 875-8890 or toll free (866) 258-8266

Email: spaceley@maconresources.org

Web site: <http://www.maconresources.org/bluetower/products.aspx>

The *WE CAN Stop Abuse: A Sexual Abuse Prevention Curriculum for Persons with Developmental Disabilities* curriculum was tested for over two years in several communities in Illinois and has been proven effective to teach prevention skills to persons with developmental disabilities.

CROWD - The Center for Research on Women with Disabilities

6550 Fannin, Suite 1421

Houston, Texas 77030

Phone: 713-798-5782

Toll Free: 800-44-CROWD

Email: crowd@bcm.tmc.edu

CROWD is a research center that focuses on issues related to health, aging, civil rights, abuse, and independent living.

Disability, Abuse & Personal Rights Project

(in association with The Arc Riverside's CAN DO Project)

Contact: Nora Baladerian

2100 Sawtelle Blvd. #303-1

Phone: (310) 473-6768

Email: nora@disability-abuse.com

Web site: <http://disability-abuse.com/>

Provides annual national/international conference on people with disabilities and abuse, also provides on-line training course on abuse and disability issues. Created the video, "*Victims with Disabilities: The Forensic Interview*" which comes with a comprehensive training guide,

available from The Office for Victims of Crime at <http://www.ojp.usdoj.gov/ovc/>, and the one-day training “*Child Abuse and Children with Disabilities: The First Response.*”

Disability Abuse/Assault Response Team (DART)

Contact: Mary Oschwald
Portland State University, Regional Research Institute
1600 SW 4th Avenue, Suite 900
Portland, OR 97207
Phone: 503-725-4040
Email: Oschwald@pdx.edu

DART coordinates advocacy, co-advocacy, crime victim and independent living services for crime victims with disabilities. The overall goal is to increase the access of victims with disabilities to personal safety, a broad range of services and to support them in working through the criminal justice system.

Disabled Persons Protection Commission

50 Ross Way
Quincy, MA 02169
Phone: (617) 727-6465
Hotline: (800) 426-9009 V/TTY 7 Days a week
<http://www.mass.gov/dppc/>

Protects adults with disabilities from abusive acts and omissions of their caregivers through investigation, oversight, public awareness, and prevention.

IndependenceFirst Domestic Violence/Sexual Assault Services

Contact: Leslie Myers
600 West Virginia, Suite 301
Milwaukee, WI 53204
Phone: 414-226-8381 (Voice/Relay)
Email: lmyers@independencefirst.org
Web site: http://www.independencefirst.org/services/other/violence_prevention.asp

Provides a communication book of pictographs to assist crime victims to tell their story (includes Spanish and ASL signs). The organization provides direct services to victims with disabilities in a four-county area and has created a number of nationally-recognized publications/curricula on the topic of violence in the lives of people with disabilities.

SafePlace: Domestic Violence & Sexual Assault Survival Center Disability Services ASAP

Contact: Wendie Abramson
P.O. Box 19454
Austin, Texas 78760
(512) 267-7233
email: wabramson@austin-safeplace.org
web site: <http://www.austin-safeplace.org/>

Provides education for youth and adults with disabilities across Texas in order to reduce risk of sexual abuse, domestic violence and/or caregiver abuse, and to promote healthy relationships.

Develops curricula specific to victims with disabilities and offers free resources through their nationwide lending library.

Vermont Communication Support Project

Contact: Dawn Seibert

14-16 Baldwin Street, Drawer 20

Montpelier, VT 05630

Phone: (802) 828-0030

Email: dseibert@defgen.state.vt.us

Web site: <http://www.vtlawhelp.org/Home/PublicWeb/Library/Index/1840000/CourtAssist/indexhtml>

Wisconsin Coalition Against Domestic Violence (WCADV)

307 South Paterson Street

Madison, WI 53703

(608) 255-0539

<http://www.wcadv.org/>

In 1996 the coalition broadened their focus to include abuse of people with disabilities. WCADV has established a national presence as a central point of contact on domestic abuse in later life and abuse of people with disabilities.

<h2 style="text-align: center;">Suspect/Defendant Resources</h2>
--

Web Sites

Quality Mall: Justice & Victimization

<http://www.qualitymall.org/directory/dept1.asp?deptid=45>

This site contains resources, projects, services, programs, and supports that assist persons with developmental disabilities who are victims, witnesses or suspects within the criminal justice system.

Suspect/Defendant-related Resources

American Bar Association Juvenile Justice Committee

Contact: Sadie Rosenthal, Staff Attorney

740 15th Street, N.W.

Washington, DC 20005

(202) 662-1508

The committee assisted in the development of a juvenile court training curriculum which includes those with disabilities. See <http://www.njdc.info/macarthur.php> to view “*Understanding Adolescents: A Juvenile Court Training Curriculum.*”

Capacity for Justice

7701 N. Lamar, Suite 500

Austin, TX 78752

(512) 451-3191

e-mail: ghearon@texas.net

web site: <http://www.capacityforjustice.org/default.aspx>

Addresses pre-adjudication and execution competency issues for respondents and defendants with mental illness, mental retardation or concurrent mental and substance use disorders.

Criminal Justice Support Network of Australia

email: cjsn@idrs.org.au

web site: <http://www.idrs.org.au/cjsn/index.html>

The Network located in New South Wales, Australia provides volunteer support workers for people with an intellectual disability who are in contact with the criminal justice system. A support worker is provided for a person with a disability seeking assistance at police interviews, courts and related legal appointments whether they are victims, witnesses, suspects or defendants. They provide training and have developed a "*Lawyers Information Kit*."

Disability, Abuse & Personal Rights Project

Contact: Nora Baladerian

2100 Sawtelle Blvd. #303-1

Phone: (310) 473-6768

Email: nora@disability-abuse.com

Web site: <http://disability-abuse.com/>

Developed a training curriculum for people with intellectual disabilities, co-written by a person with disabilities titled, "*The Rules of Sex: Social and Legal Guidelines for Those who have Never Been Told*," to help those with intellectual disabilities learn what is legal or not legal with regard to sexual activities.

The Law Enforcement Awareness Network

e-mail: help@leanonus.org

web site: <http://www.leanonus.org/pages/1/index.htm>

L.E.A.N. provides first responders with information and resources that will allow them to better serve individuals within their communities affected by hidden disabilities (Autism Spectrum Disorders, Alzheimer's Disease, Tourettes Syndrome, Epilepsy, Mental Impairment, Deafness, and Mental Illness).

PACER's Juvenile Justice Project

Contact: Lili Garfinkel

8161 Normandale Blvd.

Minneapolis, MN 55237

(952) 838-9000

<http://www.pacer.org/jj/index.htm>

Pacer's Juvenile Justice Project began in 1994 with funding from a private foundation. It was the first national project to examine the issues related to the overrepresentation of youth with disabilities in the justice system; has written publications on the topic.

Temple University's Institute on Disabilities

1301 Cecil B Moore Ave, 423 Ritter Annex,
Philadelphia, PA 19122
Voice/TTY: (215) 204-1356

http://disabilities.temple.edu/publications/publications_2005-0504.htm (scroll down to find “Individuals with Mental Retardation and the Criminal Justice System: Complete Set of 5 Training Guides”). Temple produced a number of curricula for professional groups within the criminal justice system, as well as curricula for advocates. The complete set of curricula is \$120.00 and includes a video (2003).

The University of Connecticut A.J. Pappanikou Center for Developmental Disabilities

Contact: Mary Eberle
263 Farmington Ave
Farmington CT 06030
(860) 679-1500 or (866) 623-1315

<http://www.uconncedd.org/Projects/CriminalJustice/Methods.htm>

The Criminal Justice Project collects data and sponsors the Criminal Justice Collaborative which meets periodically to discuss issues of relevance to persons with cognitive disabilities in the Connecticut criminal justice system. There are 5 working groups within the Collaborative: Victims, Police and Investigation, Juvenile, Court Procedures and Corrections.

University of South Dakota’s Center for Disabilities

Department of Pediatrics
The University of South Dakota School of Medicine & Health Science
1400 West 22nd Street
Sioux Falls, South Dakota 57105
(605) 357-1439 or 1-800-658-3080 (Voice/TTY)

The Center recently updated “*The Criminal Justice and Human Services Systems: A Coordination Handbook*” (2005) which includes an overview of the criminal justice system to help advocates wanting to assist people with developmental disabilities once accused of or arrested for committing a crime.

University of Southern Mississippi Institute for Disability Studies

118 College Drive #5163
Hattiesburg, MS 39406
(601) 266-5163

<http://www.usm.edu/ids/>

The *And Justice for All Training Module* includes a training manual, five training manual DVDs, an attorney and an advocate handbook, and a victim service provider resource guide. The complete set of materials is available for \$129.00 (items are not sold separately).

*** A Note About Specialized Treatment Providers ***

There are only a handful of programs for offenders that people with intellectual disability can go to as alternative to sentencing or while in jail or prison. Some programs are specifically for sex offenders with intellectual disabilities and other programs are more general. To find out if there are any specialized programs in your area, contact your local police department for more information. Another resource to call is ANCOR (American Network of Community Options

and Resources) at 703-642-6614 or http://www.ancor.org/about/ps_criminaljustice.html.
ANCOR provides referrals to a number of such programs throughout the U.S.

Legal Resources for Victims and/or Offenders

ABA Commission on Mental & Physical Disability Law

1800 M St. NW
Washington, D.C. 20036
(202) 331-2240
email: cmpdl@abanet.org

web site: <http://www.abanet.org/disability/home.html>

Publishes a number of materials related to the legal representation and rights of people with varying disabilities, including cognitive disabilities. The ABA also compiles a list of lawyers practicing disability law throughout the country available at:

<http://www.abanet.org/disability/disabilitydirectory/home.shtml>

ADA Information Line

800-514-0301 (Voice)
800-514-0383 (TTY)

web site: www.usdoj.gov/crt/ada/adahom1.htm

The U.S. Dept. of Justice answers questions about the ADA and provides free publication by mail and fax through its ADA Information Line; publications may also be viewed or downloaded at its website. Also have a video available on police response to people with disabilities, see:

<http://www.ada.gov/policeinfo.htm>

The ADA and IT Technical Assistance Centers

Phone: 800-949-4232 (Voice/TTY)

<http://www.adata.org/centers.htm>

The National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Dept. of Education has funded a network of grantees throughout the nation to provide information, training and technical assistance to agencies and businesses regarding their responsibilities and duties under the ADA.

Bazelon Center for Mental Health Law

1101 15th Street, NW Suite 1212
Washington, DC 20005
(202) 467-5730

<http://store.bazelon.org/crim.html>

Bazelon has developed a consumer-friendly booklet that explains what happens to federal benefits for people with disabilities when they go to jail or prison titled “*Arrested? What Happens to Your Benefits if You Go to Jail or Prison*” (March 2004)

Civilrights.org

Phone: 202-466-3311

<http://www.civilrights.org/issues/disability/index.html>

Civilrights.org is a collaboration of the [Leadership Conference on Civil Rights](#) and the [Leadership Conference on Civil Rights Education Fund](#). Its mission: to serve as the site of record for relevant and up-to-the minute civil rights news and information.

Legal Advocacy for People with Developmental Disabilities

Contact: Christine White

The Arc – Wisconsin

600 Williamson Street, Suite J

Madison, WI 53703

(608) 241-4272 or christinewhite@ameritech.net

Provides one-on-one advocacy for individuals in the criminal justice system within Wisconsin.

National Disability Rights Network

Phone: (202) 408-9514 or TTY: (202) 408-9521

<http://www.napas.org/>

The Network serves individuals with a wide range of disabilities – including, but not limited to, those with cognitive, mental, sensory, and physical disabilities – by guarding against abuse; advocating for basic rights; and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems. It is the largest provider of legally based advocacy services in the United States. It provides phone numbers to all state protection and advocacy agencies (also known as “P&A’s”) throughout the U.S.

The National Children’s Advocacy Center

210 Pratt Avenue

Huntsville, AL 35801

Phone: (256) 533-KIDS (5437)

Fax: (256) 534-6883

<http://www.nationalcac.org/>

The National Children's Advocacy Center (NCAC) is a non-profit organization that provides training, prevention, intervention and treatment services to fight child abuse and neglect. There are 500 established and developing programs throughout the U.S. Many of these centers do forensic interviewing (of children and people with developmental disabilities), which is often needed in order to move the victim’s case forward to prosecution.

Texas Appleseed

Contact: Deborah Fowler, Senior Attorney

512 E. Riverside, Ste. 212

Austin, TX 78701

(512) 804-1633 X105

<http://www.texasappleseed.net/index.html>

Texas Appleseed has written two publications in 2005 to help attorneys and families know how to help someone with developmental disabilities who are involved in the criminal justice system as a suspect or defendant. It provides answers to basic questions, such as “Am I responsible for hiring a lawyer?” and “My son’s lawyer will not return my calls, what can I do?”. The publications are titled “*Opening the Door: Justice for Defendants with Mental Retardation, A*

Handbook for Attorney Practicing in Texas” AND “Finding the Path to Equal Justice, A Handbook for Defendants with Mental Retardation and Their Families”

U.S. Department of Justice, Civil Rights Division, Special Litigation Section

Special Litigation Section

950 Pennsylvania Avenue, NW

Washington, D.C. 20530

(202) 514-6255 or toll-free (877) 218-5228

<http://www.usdoj.gov/crt/split/mr.htm>

The Section has initiated investigations of conditions of confinement in more than 30 facilities for people with mental retardation across the country and in the Commonwealth of Puerto Rico.

The Section currently monitors conditions in 22 facilities that operate under court orders or settlement agreements with the United States. To file a complaint against an institution, see

<http://www.usdoj.gov/crt/split/complaints.htm>



POSITION STATEMENT



PROTECTION

POLICY STATEMENT

People with mental retardation and related developmental disabilities³ must be protected from harm and injury and must have the tools and supports so that they can protect themselves.

ISSUE

Abuse, neglect, and mistreatment of our constituents by the general public, service providers, and even their own families are all too common. Families often lack the supports necessary to avoid undue stress as well as access to resources to help them protect their children from abuse, neglect, and mistreatment by others. Individuals living outside the family home, regardless of the size or location of the residence, are particularly vulnerable. In addition, existing laws, regulations, and policies may fail to prevent abuse and neglect.

POSITION

Protection from harm of people with mental retardation and related developmental disabilities is vital.

Children

In most situations the birth, adoptive, or foster family is the best source of protection from harm for a child. To fulfill that role, a family should have access to:

- Family support services.
- Parent support groups.
- Information and referral networks.

If the family is unable to provide necessary protection for any reason, federal, state and local child protection laws and regulations should be applied to protect the child. Any protective action should infringe as little as possible on the individual's and family's right to privacy and self-determination.

Adults

When an adult needs protective assistance, the best protection usually comes from the person's family, community, and friends. Protection services should be provided through adult protective agencies or advocacy groups. Individuals should be trained to better protect themselves. As with children, whenever applicable and available, the full force of the law should be applied to protect the individual.

*Adopted: Board of Directors, AAMR
May 28, 2002*

*Congress of Delegates, The Arc of the United States
November 9, 2002*

³ "People with mental retardation and related developmental disabilities" refers to our constituency, *i.e.*, those defined by the AAMR classification and the DSM IV. In everyday language they are frequently referred to as people with cognitive, intellectual and developmental disabilities although the professional and legal definitions of those terms both include others and exclude some defined by DSM IV.



POSITION STATEMENT



CRIMINAL JUSTICE

POLICY STATEMENT

People with mental retardation and related developmental disabilities,⁴ like other residents of the United States, have the right to justice and fair treatment in the criminal justice system, including reasonable accommodations as necessary.

ISSUE

Fear, prejudice, and lack of understanding of our constituents are magnified when an individual becomes involved in the criminal justice system. Most attorneys, judges, law enforcement personnel, forensic evaluators, and citizens on juries lack adequate and appropriate knowledge to apply standards of due process in a manner that provides justice for our constituents .

- Victims with these disabilities are frequently devalued and ignored.
- Witnesses are subject to routine exclusion because of stereotyped views of their competence to testify or denial of their needs for supports and accommodations.
- Defendants are often denied due process and effective representation at every stage of the proceedings.
- Incarcerated individuals are abused, exploited, and excluded from habilitative programs.

When these individuals come into contact with the criminal justice system, they can find few organized resources for information, training, technical assistance, and referral. Moreover, people with mental retardation involved with the criminal justice system encounter problems that are caused by their disability, such as:

- Failing to have their disability identified by authorities because the individual is attempting to hide mental retardation.
- Giving incriminating, but inaccurate “confessions,” because the individual wants to please or is confused or misled by inappropriately used investigative techniques.
- Being found incompetent to stand trial because the individual cannot understand the criminal justice proceeding.
- Being found incompetent and being inappropriately placed in an institution for a long period of time in order to “regain competency.”

⁴ "People with mental retardation and related developmental disabilities" refers to our constituency, *i.e., those defined by the AAMR classification and the DSM IV. In everyday language they are frequently referred to as people with cognitive, intellectual and developmental disabilities although the professional and legal definitions of those terms both include others and exclude some defined by DSM IV.*

- Being unable to assist their lawyer in their own defense.
- Waiving rights unknowingly in the face of required warnings such as Miranda.
- Being victimized by the criminal justice system because their testimony is not deemed credible whether as a witness, victim or defendant.

POSITION

When our constituents come into contact with the criminal justice system, they must:

- Have their rights to access to justice and fair treatment assured.
- Receive assistance and accommodations to have their cases fairly heard.
- Have access to and the right to present expert evaluations and testimony by professionals with training and expertise in their disability
- Be treated fairly by all personnel including judges, defense lawyers, prosecutors, court personnel, forensic evaluators, law enforcement personnel, victim assistance personnel, and criminal justice policymakers.
- Have the right to an advocate, in addition to their lawyer, who has expertise in their disability.
- Be protected from harm, self-incrimination, and exploitation at all stages of an investigation, including when they are questioned, detained, and incarcerated.

When they act as witnesses, they must:

- Have available to them judges, lawyers, prosecutors, court personnel, and others who are educated about the effects of their disability.
- Have necessary supports and accommodations available so that their testimony is heard and fairly considered.

When sentenced, they must:

- Have available reasonable and appropriate accommodations, treatment, and education, as well as alternatives to sentencing and incarceration that include community-based corrections.
- Be exempt from the death penalty because existing case-by-case determinations of competence to stand trial, criminal responsibility, and mitigating factors at sentencing have proved insufficient to protect the rights of individuals with mental retardation. The presence of mental retardation by definition raises so many possibilities of miscommunication, misinformation, and an inadequate defense that the imposition of the death penalty is unacceptable. People with mental retardation must be exempt from the death penalty but not from other appropriate punishment, on a case-by-case basis.

*Adopted: Board of Directors, AAMR
May 28, 2002*

*Congress of Delegates, The Arc of the United States
November 9, 2002*