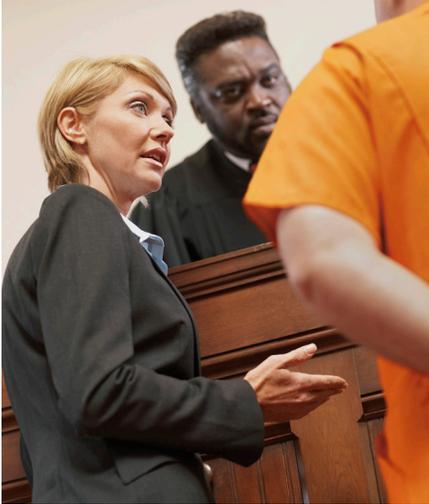


5 Facts Attorneys Need to Know

When Representing or Working With Citizens with Intellectual and Developmental Disabilities (I/DD)



1. People with I/DD are vulnerable at every stage in the criminal justice system. Be aware of systemic cracks at every point where your client (or witness) comes into contact with the criminal justice system.

2. If competency issues are even remotely possible, test! To be found competent to stand trial, the defendant must have both a rational and factual understanding of the nature of the proceedings against them, and be able to effectively assist counsel in preparing a defense. If there is any doubt, test!

Remember: a diagnosis involves more than just a low IQ score—adaptive functioning is equally important. Adaptive behavior = conceptual skills + social skills + practical skills.

3. People with low IQ are generally unable to waive Miranda. The *Miranda* rights are generally found to be at a 7th grade level—someone with an intellectual disability with an IQ around 70 may read at a sixth grade level or below.

4. False Confessions are much higher among people with I/DD.

Generally, people with intellectual disabilities are:

- More likely to respond to coercion and pressure
- Highly suggestible to leading questions and false information
- Particularly vulnerable to atmosphere
- Unable to understand concepts of blameworthiness and culpability

5. Sex Offenses by a person with I/DD are often not the result of sexual deviance. These offenses generally do not result from unusually strong sexual drive as some mistakenly believe. Often, sex offenses are the result of counterfeit deviance. Factors influencing this inappropriate behavior include:

- Not having enough opportunities for appropriate sexual expression and limited availability of partners
- Ignorance of what is considered appropriate and inadequate social education
- A history of sexual or physical abuse
- Difficulty projecting consequences of behavior

Individuals with disabilities who are charged with sexual offenses may engage in acceptable sexual behaviors but with someone who is not an appropriate age—this is called “age discordant sex play.”



National Center on
Criminal Justice & Disability™

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For more information on this topic, see the Pathways to Justice™ Training.

5 Facts Attorneys Need to Know

When working with a victim/witness or suspect/offender with I/DD, identification, communication, and accommodation are the three keys to better outcomes.

Identification

Check the person's history for and ask "Does/did the person":

- Graduate high school? Have an IEP? Work after high school? Cook, clean, and do laundry?
- Are there past psychological evaluations or other assessments available?

Observe your interactions for possible signs of I/DD including:

Difficulty Communicating

- Seem responsive and able to understand your conversation?
- Have trouble understanding abstract concepts?
- Have difficulty with reading or writing or have a short attention span?
- Struggle to give accurate directions, count money, or tell time?

Consequences of Actions

- Seem aware of the seriousness of the situation?
- Seem eager to please or easily persuaded by others?

Inappropriate Behavior

- Smile inappropriately, make other non-verbal cues that are atypical, have issues with personal space, or make inappropriate facial expressions?

Communication

- Clearly identify yourself—who are you and why are you there? Repeat if necessary
- Use simple wording—no complex terms
- Take time giving or asking for information and repeat questions if necessary
- Always use open-ended, non-leading questions in a straightforward, non-aggressive way
- Consider setting aside additional time pre-trial and during the trial to explain events
- Check with support personnel and the client about assisted communication and devices

Communicating Lengths of time

Consider using a calendar with events important to the person included for reference.

Social Stories

Discuss expectations of behavior in new situations. I.E. A victim/witness might read a story about Sam, who testified bravely in court while wearing a nice suit.

Accommodation

Each courthouse is required to have an ADA coordinator who ensures ADA standards are met.

Pre-Trial

- Be sure to discuss appropriate court room behavior and attire in detail. Visit the court room prior to trial.
- Simplify language on documents
- Ask that client be called first on the docket to avoid additional anxiety.

Trial

- Have everyone talk slowly or write, and repeat information when necessary
- Take periodic breaks
- Present information in concrete, step-by step ways
- Allow videotaped testimony or video conferencing
- Use interpreters, alternative text formats, or note takers to aid in comprehension
- Consider alternative seating arrangements or modified schedules
- Move for a support person or emotional support animal to aid the person during trial

Post-Trial

- Sentencing terms provided at appropriate developmental level
- Safe placement during incarceration or appropriate alternatives to incarceration.

Remember

- Incarceration is disproportionately harmful to people with disabilities.
- Non-traditional communication ability does not indicate unreliability of a witness or victim to testify.
- **Mitigate**—all the life circumstances of a person with a disability should be examined to determine culpability, actual (not perceived) threat to public safety, and appropriate correctional placement.

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