

Legislation, Existing Protocols and Best Practices Training for Service Providers and Caregivers of People with Developmental Disabilities in the Criminal Justice System

Fact Sheet



Many times, support staff and caregivers for persons with developmental disabilities are asked to assist and support clients through the Criminal Justice System (CJS). For many, this is a new and confusing experience as their knowledge of the CJS is minimal; support staff and caregivers may be unsure of how to best support their clients through this process.

In 2005/2006, the Canadian Research Institute for Law and the Family (CRILF) and the Vocational and Rehabilitation Research Institute (VRRRI) conducted a study to better understand the current justice system, as it pertains to people with developmental disabilities. Research activities consisted of: a review of the relevant legislation in Alberta; twelve key informant interviews with justice personnel, including police officers, legal representatives, and correctional staff; eleven “client-related” interviews with people with developmental disabilities, support staff, and a family member; and four half-day workshops for support staff and caregivers of people with developmental disabilities in Calgary.

This Fact Sheet summarizes and highlights findings from the study. A detailed presentation of the findings is provided in the final report, *Legislation, Existing Protocols and Best Practices Training in the Criminal Justice System, 2006*, by Monica Pauls and Monetta Bailey.

KEY RESPONSES FROM CLIENTS, SUPPORT STAFF AND CAREGIVERS

Clients

- Clients reported that they had little to no understanding of CJS proceedings.
- In most situations, clients did not have assistance when in the CJS. Clients generally felt that they would have benefited from some assistance.
- Clients had mixed feelings about disclosing their disability, but believe that in the long run disclosing is beneficial if justice officials are educated on various developmental disabilities.
- Clients stated that they want justice officials to realize that they may need certain accommodations in the CJS.

Support staff

- Staff agreed that they have a role to play when clients are involved in the CJS, but warn that they should not get overly involved.
- Staff indicated that they had limited knowledge of the CJS; what knowledge they did have was gained by previously supporting clients. Staff felt that their clients were very dependent.
- Staff believed that there needs to be more education on developmental disabilities and a focused response to accommodate persons with developmental disabilities in the CJS.

LET'S HEAR FROM THE CJS

Policing

- In terms of legislation, the *Criminal Code* of Canada has general application to all people in society, and does not include any special consideration of people with developmental disabilities.
- The *Mental Health Act* is not necessarily applicable or appropriate for people with developmental disabilities, but is sometimes stretched and adapted to fit such situations.
- The sections in the *Charter of Rights and Freedoms* most relevant to people with developmental disabilities in the criminal context are 7 and 10(b): Right to Silence and Right to Counsel.
- Both sections may put a person with a developmental disability at risk due to the reliance on an "operating mind" to make informed choices: a person must be able to understand what he/she is saying and that the evidence may be used against him/her.
- There are no formal pieces of legislation or official protocols in place to guide police conduct in investigations involving people with developmental disabilities.
- Some police organizations in Alberta have resource positions, such as the Disability Liaison Officer of the Calgary Police Service.
- Police respondents highlighted identification as the biggest challenge they face in working with people with developmental disabilities.
- Other challenges are communication and lack of understanding, particularly when obtaining statements.
- Police respondents reported relying on programs for the mental health population when dealing with people with developmental disabilities... sometimes the only option.

Legal Representation and the Court Process

- Relevant legislation in this area includes: Fitness to Stand Trial and Defence of Mental Disorder.
- However, only developmental disabilities that are severe in nature are likely to attract these

dispositions; could be relevant to people with developmental disabilities, but not commonly utilized.

- Sentencing hearings fall under the jurisdiction of the *Criminal Code*.
- The procedure involves flexibility, discretion, and consideration of mitigating and aggravating circumstances; should help to serve the needs of people with developmental disabilities.
- However, appropriate sentencing requires a social infrastructure outside of the custodial environment; it is necessary to have community programs, resources, and supports in place.
- The legal community does not receive any formal training on developmental disabilities.
- Some justice communities, such as Lethbridge, have seen education initiatives around a specific disability (e.g., Fetal Alcohol Spectrum Disorder).
- Identification, communication, and understanding were again cited as challenges.
- Respondents agreed that criminal convictions and the accompanying consequences have little or no effect on most people with developmental disabilities; rehabilitation is rare if a person does not understand the purpose of a sanction because of cognitive damage.

Corrections

- A big problem in corrections right now is that there is an increasing number of offenders who have some type of developmental disability.
- Recently in Alberta, there has been a lot of correctional staff training around FASD; no training on other developmental disabilities.
- Identification, communication, and understanding are challenges faced by correctional staff.
- Two correctional facilities in Alberta house Specialized Mental Health Units, which provide treatment for offenders with organic brain damage, mental illness, and suicidal tendencies (limited beds).

DIVERSION

- Alternative measures, provided for under the *Criminal Code*, offer a flexible approach to dealing with people with developmental disabilities.
- The following conditions must be met: appropriate to the needs of the accused, society, and the victim; accused must consent to participate and accept responsibility for the crime; there must be sufficient evidence to proceed with prosecution.
- Some issues exist around the competency of a person with a developmental disability to accept responsibility and around the misuse of discretion by police and the Crown.
- The fundamental question is: To what extent should people with developmental disabilities be diverted from the CJS?
- Respondents felt people with developmental disabilities should be held responsible for their criminal actions to some degree, but accountability should be maintained through appropriate processes and consequences.

ALTERNATIVE PRACTICE MODELS

Some of these programs are specific to people with developmental disabilities, some serve other vulnerable populations, and others are narrower in scope. However, there are lessons to be learned from each of these and they may be considered when trying to develop an effective response to this issue.¹

1. Calgary Diversion Service
2. FASD Projects for Youth
3. Appropriate Adult Safeguard
4. Specialized Mental Health Unit
5. Ohio Partners in Justice

¹ While not an exhaustive list of the initiatives that exist in this area, these are a few unique programs uncovered while conducting this study. For more detail on these programs, please see the final report.

SUPPORT WORKERS AND CAREGIVERS: AN IMPORTANT ROLE

Tips for best supporting people with developmental disabilities through the CJS:

1. Navigate through the process
 - Communicate information about the process to your client
 - Alleviate stress and confusion
2. Get knowledgeable – Get aware
 - Learn about the CJS so that you are not lost yourself
 - Learn about rights, options and alternatives
3. Understanding and Communication
 - Facilitate understanding and communication for both your client and justice personnel
 - Your client will need to make their own decisions... better that they be INFORMED decisions
4. Information Sharing
 - Provide information about your client, the disability, accompanying issues, and the incident – this helps justice personnel in understanding the situation
 - The caregiver usually has the greatest knowledge of a client – sharing information provides the context and foundation needed to build an appropriate strategy
5. Be valued
 - Without impeding the process, realize that you have something important to contribute and that you have a role to play
 - Demand respect – be persistent – ask questions – share information
6. You're not a lawyer...
 - Realize your importance, but also your place
 - You are not there to provide legal guidance or judgement – be an advocate instead
7. Stay involved
 - Be there to provide support
 - The client will be coming back to the community

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