

When Individuals with Developmental Disabilities Become Involved in the Criminal Justice System:

A Guide for Attorneys



This guide is brought to you by The Arc of Northern Virginia, with thanks to generous permission from The Arc of New Jersey who crafted the original version of this guide.

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Dedication

As Arc chapters, we are dedicated to ensuring that the human and civil rights of people with developmental disabilities are protected. We are grateful for The Arc of New Jersey's Criminal Justice Advocacy Program that has led the way across the nation in teaching about preventing people with developmental disabilities from becoming entangled in the criminal justice system and teaching us how to proceed when it happens. Their 2014 Guide for Attorneys is the inspiration for this publication.

We dedicate this guide to The Arc of New Jersey, the attorneys reading it and doing all they can to protect the rights of people with developmental disabilities, and all of the individuals with developmental disabilities who have become involved with the justice system, for their struggles have paved a path forward for the future.

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About The Arc

The Arc is the largest national non-profit community-based organization advocating for and serving people with intellectual and developmental disabilities and their families. There are nearly 700 chapters across the country.

The Arc of Northern Virginia serves Arlington, Alexandria City, Fairfax, Fairfax City, and the City of Falls Church. The chapter's primary focus is on advocacy and providing information and resources to people with disabilities and their families. The chapter operates a Special Needs Trust program and offers some case management and guardianship services.

People with Developmental Disabilities in Our Jails: A Big Problem

Chapters of The Arc receive thousands of calls, emails, and visits every year from people with developmental disabilities (DD) and their families. In recent years, we have seen a consistent rise in inquiries about people with DD becoming caught up in the criminal justice system, most often due to a manifestation of their disability. This has been a horrifying new frontier for the people we serve and we have found ourselves unprepared. This guide is one step we are taking to help manage this crisis.

Numbers of people with developmental disabilities in jails is high. **People with developmental disabilities comprise 2-3% of the total US population, but 25%+ of the population in detention centers, with the highest concentrations in juvenile facilities.**¹ Anecdotally, we have seen a particular rise in criminal justice issues for people on the autism spectrum. This almost always seems to stem from the disability. For example, a person is exhibiting some behaviors a passerby thinks are unusual, so they call the police. The police witness the behaviors and challenge the person on what they're doing. Someone with a developmental disability is often not able to explain what they are doing and why and can be frightened by the police. Confusion, arguments, and physical struggles can result and we find ourselves in a position where someone whose behavior was a totally innocent action has resulted in them being charged, arrested, and put through the courts.

It is important to know that despite the very high numbers of people with DD in our justice system, people with developmental disabilities are even more likely to become victims of crimes than the typical population. In fact, people with DD are between 4-10 times more likely to be victimized than someone without a developmental disability.²

¹ <https://theconversation.com/us-prisons-hold-more-than-550-000-people-with-intellectual-disabilities-they-face-exploitation-harsh-treatment-158407>

² <https://www.vera.org/state-of-justice-reform/2018/disability>

How Did the Problem Get So Out of Hand?

There is no evidence that people with developmental disabilities are more likely to commit crimes than peers without disabilities, so why do we see such disproportionate numbers of people with DD arrested and in jail?

- Defendants or suspects with DD often display poor judgement and self-preservation skills.
- People with DD may feel embarrassed because of their disability and may try to hide it.
- People with DD often nod or say yes or use contextual clues to show they are understanding what is explained and asked, even though they are not truly able to follow the conversation.
- People with DD may try to “fit in” with people without disabilities and be easily persuaded or bullied into partaking in criminal activity.
- People with DD have a difficult time processing information as quickly as it may be requested from the police and enter a fight or flight response out of fear.
- People with DD can be eager to please and try to tell people what they think they would like to hear, including giving confessions for crimes they did not commit.
- People with DD can struggle to read social cues and understand unspoken rules or subtleties.
- People with DD can have unusual behaviors that draw suspicion upon them.
- People with DD may freeze, run, or react poorly when overwhelmed or overstimulated.
- People with DD may better identify with children who have a similar intellectual ability and not understand the consequences of sexual acts, friendships, or child pornography as the child is seen as an equal.
- Virginia leads the nation in referring students to law enforcement for school-based actions at three times the national average³
- The state disorderly conduct statute makes it a criminal offense for a student to disrupt instruction during school by causing “inconvenience or annoyance,” even when that behavior is a clear and documented manifestation of a disability.

We can then create a cycle familiar to many in the justice system. People with DD are coerced into committing a crime or confessing to a crime they did not commit. Once in jail, they are significantly more likely to be victimized by other inmates and do not receive supports related to their disability. This can result in negative behaviors while in jail or exacerbation and development of mental health needs or substance abuse issues. People have a harder time showing they have been “rehabilitated,” because they have not been due to a lack of supports or lack of initial criminal intent and have a more difficult time being released. No mandated supports exist related to the disability once people leave jails, leaving people with DD incredibly vulnerable to entering the justice system again.

³ <https://www.linkedin.com/pulse/project-save-childhood-need-improve-school-climate-virginia-hiznay?trk=mp-author-card>

The Reasoning for this Guide

This guide is offered as a free resource for attorneys who may work with people with developmental disabilities in the justice system. Our aim is to assist attorneys in understanding the possible presence of a disability in a client, how to fully identify that disability, and offer some ideas on appropriate ways to defend that person in a criminal prosecution. Cases are so individualized that this guide could never hope to be fully comprehensive, but it is meant to offer a solid foundation. The guide will not provide legal advice.

This guide will share information about community-based resources to help people with disabilities. Once people with developmental disabilities leave the public school system, either at age 22 when they age out or earlier when they graduate, there are NO mandated public services and supports available. Public services that do exist often have long waiting lists and limited support options. A lack of supports can quickly lead to entanglement in the justice system.

One Family's Story

My youngest son, Todd, proceeded to disclose that his brother, Daniel, age 57 who is intellectually disabled, had been discovered looking at child pornography (CP) at his federal government job in DC. Todd had just returned from Daniel's apartment in Virginia where Daniel was questioned by a detective and an Inspector General Officer after being read Garrity Rights. Daniel signed a multi-page statement without an advocate present. His brother came as he was signing the statement.

Todd found out that Daniel's viewing had been discovered in April and his office computers were confiscated. He was put on paid administrative leave. Daniel did not know why his computers were taken or why he was put on leave. He was questioned by an officer from the Inspector General's office with his union steward present. His union steward advised Daniel not to say anything without an attorney present, but Daniel believed that he should answer whatever he was asked. When asked if he had ever "distributed" child pornography, he answered "No, I only sent it to my home computer in Virginia." He did not tell his brother or family what had happened at the time.

This began an experience in the criminal justice system in Virginia that lasted 15 months with \$60,000 in legal, psychological evaluations and counselor expenses. The fear and terror for a man with a childlike mind and for his family who had helped Daniel with adaptation to mainstream society was immense. Coordination of a team of professionals who did not appear to have experience with people who are intellectually disabled added to our anxiety.

Those professionals were willing to learn and their efforts led to Daniel's being found incompetent to stand trial. The charges were dismissed. There is an arrest record and the aftermath of the experience left his family fearful and protective. Daniel is able to learn and follow rules but "there is no big sign out there that says watching child pornography is a crime", he told his counselor. I contrast that with the Ten Commandments that are listed on tablets that are ubiquitous and easy to read.

As a parent, age 82, I did not know:

1. The dangers of the internet to a vulnerable person;
2. The criminal consequences for a victim of the internet's predatory dark side;
3. The lack of ability of law enforcement to halt child pornography on the internet in spite of its criminal consequences to vulnerable people;
4. The "lock 'em up" political climate that surrounds the viewing of child pornography and the lack of understanding of people with I/DD/autism who are not predators; and
5. The "civil death" that occurs when someone is put on a sex offender registry.

To Attorneys reading this manual, I beg you to fight for your client if that person is intellectually disabled. Learn about their condition and educate the prosecutorial and defense professionals that you come in contact with. Work with your local Arc to gain the resources that will make you better. Contact attorneys around the country who do have experience with the condition and learn from what they have to teach.

Working with Clients with Developmental Disabilities

Terminology

Though you may not initially know if you are working with an individual with a developmental disability, it is important that you use appropriate language and terminology in asking questions about a possible disability and in later interactions.

The term “mental retardation” is outdated and no longer used in diagnostics, schools, support service agencies, or any other group working with people with developmental disabilities. It became used as a malicious taunt over time and the appropriate current term is “intellectual disability.” You may still see “mental retardation” written on old documents or evaluations, but it is appropriate to insert “intellectual disability” in its stead in speaking or writing.

We are using the term developmental disability in this guide because developmental disabilities include intellectual disabilities, as well as individuals who may have had a disability onset a few years later and those who may have slightly higher IQs while still exhibiting all the hallmarks of the cognitive disability. In 2015, Virginia adapted a state definition of Developmental Disability and that appears below. Note that it does not have a specific IQ maximum requirement.

See: Virginia Code §37.2-100

“Developmental disability” means a severe, chronic disability of an individual that

- (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness;
- (ii) is manifested before the individual reaches 22 years of age;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
- (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are 2 of 3 individually planned and coordinated.

An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual, without services and supports, has a high probability of meeting those criteria later in life.”

Common Developmental Disabilities

The state definition of a developmental disability does not list all varieties of developmental disabilities because there are many, including rare chromosomal abnormalities. Here are some of the most common developmental disabilities you may see.

Autism Spectrum Disorder- Autism spectrum disorder (ASD) and autism are both general terms for a group of complex disorders of brain development. These disorders are characterized, in varying degrees, by difficulties in social interaction, verbal and nonverbal communication and repetitive behaviors. In May of 2013, a new diagnostic manual was released that put all autism disorders under this single category instead of sub-categories as it had previously.⁴

Cerebral Palsy- Cerebral palsy is inclusive of a group of neurological disorders that appear in early childhood, though generally present at birth. The disorder is characterized by damage to the part of the brain that controls muscle movements, balance, and coordination.

Brain Injury- Brain injuries that occur before age 22 can be considered developmental disabilities. They can be either acquired or traumatically induced.

Intellectual Disabilities

Intellectual disabilities are a subset of developmental disabilities. They must onset before age 18 and are generally hallmarked by more significant limitations in someone's level of functioning and IQ scores. Until recently, Virginia used a hard IQ cut off of 70 to define an intellectual disability, though the federal definition is much broader. Since Virginia adapted the definition Developmental Disability on page 8 above, we have moved away from using IQ scores as the basis for diagnosis.

Person First Language

"Person first language" is the appropriate rule in determining how to refer to someone with a developmental disability, but the best practice is always to ask someone. There is a growing movement, especially in the autism community for "identity first" language. The core concept of person first language is that you should always identify someone as a person first before their disability. Person first language is important to making people feel valued and respected. It is not simply a matter of political correctness, but a matter of basic respect and civil rights.

Person First Language	Labels that Stereotype and Devalue
People/individuals with disabilities <ul style="list-style-type: none"> An adult who has a disability A child with a disability A person with a disability 	The handicapped The disabled
People/individuals without disabilities	Normal people/healthy individuals
People with intellectual and developmental disabilities <ul style="list-style-type: none"> He or she has a cognitive impairment A person who has Down syndrome 	The mentally retarded; retarded people <ul style="list-style-type: none"> He/she is retarded; the retarded Moron, idiot, imbecile He/shes's got Downs
A person who has Autism	Autistic
A person who cannot speak <ul style="list-style-type: none"> A person with a speech disorder A person who uses a communication device 	Is mute/dumb Is non-verbal

⁴ <https://www.autismspeaks.org/what-autism>

<ul style="list-style-type: none"> Someone who communicates without words or is non-speaking 	
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*Table adapted from The Arc of New Jersey's "A Guide for Attorneys"

Determining if there is a Developmental Disability

Proof of a developmental disability can be obtained through a full scale IQ AND diagnosis on a psychological exam. In Virginia, this is most commonly done by a licensed psychologist in the school system (for children in school still) or private psychologists (for adults). The psychologist should be knowledgeable about and experienced with people with developmental disabilities. See Appendix VII for a list of some of the Northern Virginia providers who can offer this testing.

There is no mandate for testing or records maintenance, so it is entirely possible someone who has had a developmental disability their entire life will only first be diagnosed when encountering a crisis, like an interaction with the court system. In this case, it is important to show the disability onset during the developmental period with documentation from the doctor, school, or other professionals that interacted with the person before age 22 and noticed issues with processing, adaptive skills, cognition, etc.

Clues that a Developmental Disability may be Present

If you have any reason to believe your client is not fully understanding what is going on around them in complete depth, it is important to look for previous documentation of a disability or request new testing.

Here are some common clues that warrant a further look at whether or not the person may have a developmental disability:

- The person nods along and agrees to please others
- The person cannot reiterate explanations or rights explained to them
- The person cannot respond to or understand complex questions
- The person exhibits unusual social behavior (e.g. humming, rocking, refusal to make eye contact) and seems unaware of social norms and cues
- The person seems immature for their age
- The person is easily influenced by others
- The person shows a very literal interpretation of things presented to them
- The person struggles with basic reading or writing
- The person has limited or no job history
- The person's logic doesn't follow
- The person receives SSI or SSDI benefits through Social Security

Documents that may confirm a Developmental Disability

Some of the best documents to locate and examine to see if a developmental disability has already been diagnosed are listed below. Ask your client and their loved ones for these documents and be sure to get releases to allow these documents to be shared with you by third parties in compliance with HIPAA.

- School records, including Individualized Education Plans (IEPs) or 504 Plans
- Determinations from Social Security of a disability including receipt of Supplemental Security Income (SSI) or Social Security Disability Income (SSDI)
- Psychological evaluations, IQ tests, or other screening tools and tests
- A Special Needs Trust that may reference other documents
- Guardianship or conservatorship paperwork

Examining IQ Scores and Adaptive Behavior

IQ scores, like any testing mechanism, are not perfect, yet they are heavily relied upon when diagnosing intellectual disabilities and sometimes developmental disabilities. As previously mentioned, Virginia historically used an IQ ceiling of 70 as a hard cut off for a diagnosis of an intellectual disability, though IQ tests have a “Standard Error of Measurement” of plus or minus 5 points. That means someone with an IQ of up to 75 can have an intellectual disability. The vast majority of people with intellectual disabilities have a mild intellectual disability, usually shown by a score of 52-70 on IQ tests. This is often where a criminal defendant will score.

IQ scores can vary over time. IQs measure people with developmental disabilities against same aged peers, and for many people, that gap widens with age.

There is no ceiling for developmental disabilities and some people with DD have genius IQs, but can lack the basic life and adaptive skills they need to function with independence. You will need to look beyond IQ, for a full evaluation and diagnosis, to see these needs.

Adaptive behavior evaluations study how people are able to care for themselves and interact with others in the course of normal life. They look beyond abstract controlled testing and reasoning and focus on interviews with the individual and people in their life. They are a much better snapshot of the manifestation of the disability in everyday situations.

It is common for people with developmental disabilities to struggle picking up the adaptive behavior and social cues most people come to understand naturally as they grow into adulthood. Sometimes people exhibit great strengths in one area and large deficits in another.

Examples of areas assessed by adaptive behavior measures and possible affected areas are below.

Conceptual Skills- Can the person read, write and understand language; can the person understand the concept of money and value and work with it; can the person truly self-direct choices

Social Skills- How well does the person relate to peers, family and others; can the person be responsible for themselves and be responsible for themselves; what is the person’s level of self-esteem; is the person naïve; can the person understand and follow rules without supports; can the person understand laws; does the person have an ability to limit victimization of themselves

Practical Skills- How well does the individual manage activities of daily living (e.g. cooking, cleaning, hygiene); does the person possess occupational skills; can the person maintain a safe environment for themselves

If you are working with a client and find yourself seeking out an analysis of adaptive behavior, ensure the psychologist understands the need to highlight the following:

- If the person is easily coerced by peers or authority figures
- If the person has issues with verbal processing that result in them appearing to understand information, but not having any real understanding when questioned about that information
- If the person has behaviors or other manifestations of their disability that can directly or indirectly cause violent outbursts
- If the person understands and can articulate their disability or they try to hide their disability

Misconceptions to Avoid

People with developmental disabilities are as varied as people without intellectual disabilities. Common misperceptions about this population make it more difficult to truly understand the person, motivation, and their actions.

Common Misconceptions:

I will be able to tell the person has a developmental disability by looking at or talking to the person- Disabilities manifest in a variety of ways and many people with DD have become very good at concealing their disability to avoid bullying, stigmatization, or assumptions about them they do not like.

A mild disability will not have a strong effect on the person's life and functioning- Even a "mild" intellectual disability means the person has the scholastic ability of a student around the third grade. Individuals with very high IQs are simply able to perform well on logic and reason testing and may entirely lack adaptive life and functioning skills.

If the person has a disability, testing and documentation will already exist- For individuals who are middle aged or older, it is entirely possible they were never screened in a school setting. Even for younger defendants, people slip through the cracks all the time and leave school without a clear diagnosis, usually due to a supportive environment and team that helped the person be as successful as possible. However, once the person enters the adult world where no services and supports are mandatory, things can quickly deteriorate.

Sometimes even when records existed originally, they become lost, burned, or flooded over time and you may need to pursue an up to date evaluation that references any old documentation you are able to find.

There isn't a disability, because he/she can. . .- Judges and prosecutors have often cited anecdotal experiences (e.g. he can talk to me easily, he knows right from wrong, he can drive a car, his family says he doesn't have a disability, he tried to cover up his actions) as proof that a person doesn't have a developmental disability. As IQ test and adaptive tests consistently show, people can have a wide range of abilities that do not negate their very real disabilities and limits. There is nothing someone other than a professional in the field of evaluation and diagnosis can do to confirm or rule out a developmental disability other than looking to evaluations and testing.

Distinguishing between Developmental Disabilities and Mental Health

Developmental disabilities and mental illness are not the same thing. However, overlap is common between the populations. Someone who has both a developmental disability and mental health need is often called “dually diagnosed.” Good evaluations should parse out the factors in play and explain which adaptive needs relate to which diagnosis.

Developmental Disabilities	Mental Illness
A measure of intelligence and the ability to learn and process information	A person’s mood, thought process, and emotions not related to IQ
Onset in the developmental period (before age 22)	Can develop at any time in life
Lifelong and cannot be “cured”	May be temporary, cyclical, episodic, or restorable
Supports come from psychologists, people trained in adaptive living and development	Supports often stem from psychiatrists and/or medication
Behavior is consistent with cognitive functioning	Behavior may change or be irrational or out of keeping with other abilities

To see a guide from Texas Appleseed on defending clients with mental illness, visit <https://www.texasappleseed.org/sites/default/files/2023-05/211-mentalhealth-handbookforattorneyscriminallaw.pdf>

Moving forward after Diagnosis

After learning your client has a developmental disability, plan your interactions differently and know you may need to prepare them in ways different than you do with other clients. VA Rules of Professional Conduct (1.14) state that when a client's capacity to make adequately considered decisions in connection with representation is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship. When a lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably protective action, including consulting with the individual's or entities that have the ability to act to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian. Information relating to the representation of a client with diminished capacity is protected by VA Rules of Professional Conduct Rule 1.6. When taking protection action, the lawyer is impliedly authorized under Rule 1.6 to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Understanding Vulnerability and Support Needs

People with disabilities are vulnerable in every stage of the justice system, so think of the consequences of every phase of the system on someone who may not have social skills, awareness, or be able to fully understand what is going on around them. For example, they may not be able to waive Miranda rights that they do not understand. They may say something offensive to fellow inmates without understanding the consequences. They may experience particular hardship in isolation.

Tips on Talking to Your Client

- Plan to identify yourself and your role each time you meet until you are sure it is clear.
- Try to find a quiet place free of distractions. Limiting sensory overload helps limit self-stimulating behavior (e.g. rocking or making noises) and decreases the odds the person will become overwhelmed and stop speaking or interacting.
- When working with your client, be patient. Give a long time for responses (10 seconds at least) and do not cut the person off as they try to answer.
- Seem friendly, relaxed, and unhurried.
- Plan on interactions taking longer than they would with other clients.
- After each idea is presented, ask the person to reiterate their understanding to ensure comprehension.
- Work with a trusted family member or loved one who can relate what you're saying to concepts and experiences the person already knows.
- Rephrase your words into clear, simple, concrete language and use short sentences.
- Do not assume anything in writing will be read and understood even if the person can read. Go over it with them.
- If you sense the person is overwhelmed or you are seeing a decrease in communication and rise in behaviors, slow down, change the subject, or ask about coming back another time.
- Offer praise and reinforce their efforts.

- Consider using a “social story.” For example, “A man named George took a candy bar...” if the client was arrested for petty theft. Use this example to help the person walk through the crime and what will happen next.

Consequences of Conviction

Once you know your client has a developmental disability, you should know the possible consequences of certain types of convictions. While a criminal conviction makes life more difficult for anyone, people with developmental disabilities are particularly vulnerable. This population usually relies on at least some form of public support services if their disability prevents them from working, living, or socializing independently. These programs can be jeopardized permanently thereby leaving the person with no options at all for a successful independent life.

- Criminal convictions almost always result in a red flag or barrier to any sort of **affordable housing** opportunity. A huge number of people with developmental disabilities rely solely on Social Security benefits or benefits combined with a small salary and it is impossible to live on that money without affordable housing supports. Some crimes can be reconsidered under an accommodations process if the crime is the direct result of the disability AND disability-related supports are in place to prevent reoccurrence. However, sexual crimes including Megan’s Law registration for life bars someone from accessing housing supports through the federal Housing and Urban Development agency permanently.
- For individuals receiving **Social Security benefits**, those benefits will be suspended if the person becomes incarcerated. Imprisonment lasting over one year requires a new application for Social Security benefits, a process that can take many months or over a year. That could mean the person leaves with no income and will not have any income (unless they’re able to find work and obtain supports needed to maintain the job) for months after a release from jail.
- **Medicaid health insurance** is contingent upon receipt of Social Security benefits for adults with disabilities. This can mean not only no health insurance, but no funding for the core support services for people with developmental disabilities in Virginia called “**Medicaid Waivers.**” (see page 21 for more information)
- Many criminal convictions, even for minor offenses, can be barrier crimes to working with children, animals, or the aging population. These are **job fields** of common interest for people with disabilities.
- Terms of probation and/or bail may be more challenging. People with disabilities may have transportation, employment, or writing challenges that will require modified probation/bail.

Preparing for court

- Ensure the client truly understands what appropriate court dress and behavior are. Give examples. Include grooming needs.
- Help them learn that court will not look like what they may have seen on television.

- Let them know when they will be allowed to speak (if ever) and how they are allowed to react and manage emotions.
- Tell them what to do if they are overwhelmed or do not understand what is happening.
- Let them know when you will be mentioning their disability and other personal information that may make them vulnerable or self-conscious.
- Think long and hard about having them testify if they are someone who can easily be persuaded or confused by others as cross examinations or questioning by others may go awry.

Common crimes

You may work with clients with developmental disabilities who have been accused of committing a range of crimes. Some crimes and charges seem particularly prevalent with this population.

Petty theft- This can happen especially when the person with DD does not understand why they cannot have something immediately or is fearful they will never be able to obtain something they want. People with developmental disabilities may struggle to understand they are stealing if they are taking something from family, friends, neighbors, etc. with whom they feel they have a friendly relationship.

Grand larceny- Common in school and other settings now that the value of many common goods (e.g. sneakers, smart phones) are over \$1,000. Sometimes people with developmental disabilities are under the mistaken impression they were allowed to borrow something.

Assaulting an Officer and Resisting Arrest- Increasingly we are seeing people with autism and other developmental disabilities frightened by the police and unable to communicate. They may flap their hands, yell, or otherwise behave in a way perceived as threatening. People may not understand what police are requesting, therefore they are not able to comply. It is also frequent for someone with autism to be very sensitive to touch and noise and to physically fight back to avoid being touched. This is a manifestation of the disability.

Trespassing- If the person with a disability does have school or other community-based supports, they may end up idling around without help or focus on what to do. They can easily wander into areas they should not go (even with signage up) without understanding this is prohibited.

Child pornography- Many people with disabilities have difficulty distinguishing between a young 20-something adult and teenage and may not understand subtle wording distinguishing the two. It is also common for people with DD to say they more closely identify with small children and that the idea of children having adult experiences may not seem as odd as it does to many people. Increasingly we are hearing that “something just popped up on my computer.” This is a growing concern as more work and life skill learning is done online. The book [*The Autism Spectrum, Sexuality, and the Law*](#) describes some of the issues associated with autism and a draw to child pornography.

Sexual interactions with a minor- People with disabilities are rarely taught sex education in school and often have few opportunities for age appropriate sexual expression. There is a tendency to identify with children as peers as well as a lack of understanding of what is appropriate. “Age discordant sex play” is the term for appropriate sexual behavior with people of inappropriate age.

Things to Consider in Formulating a Defense

- Did the person understand right vs. wrong?
- Did they understand what they were doing is a crime?
- Were they able to formulate intent?
- Was an irresistible impulse (subset of insanity defense) in play?
- Are they competent to confess, stand trial, or plead guilty?

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 you in preparing their defense. An evaluation based on IQ and adaptive functioning is critical.

Note: It can be dangerous to pursue a defense focused on incapacitation. If someone is deemed incapacitated, they may be locked in a mental health or other treatment facility without an opportunity to show that their actions were the direct result of their disability and, with supports, the actions can be prevented from reoccurring.

- Did/can the person understand Miranda rights?
The Miranda rights are generally found to be at a 7th grade level while someone with an intellectual disability with an IQ around 70 may read at a sixth-grade level or below.⁵

Legal Precedent

In Virginia, courts have recognized the “Irresistible Impulse” defense as a version of the insanity defense. Thompson v. Commonwealth 193 Va.704 (1952).

Only the defendant may raise the insanity defense and must give notice pursuant to Va. Code 19.2-168.

The Virginia Supreme Court has held that the insanity defense is not available to juveniles in delinquency proceedings. Commonwealth v. Chatman 260 Va. 562 (2000)

Other Strategies

You may consider writing a letter to the prosecution and the judge outlining the disability and its clear manifestation in any alleged criminal action. This will allow an opportunity for this to be reviewed ahead of any hearings or sentencing. One family we recently worked with cited this as being one of the keys to success. Her son’s attorney presented a great deal of research, professional evaluations, and his own evaluation of the client directly to the prosecutor outside of court.

Form a “defense team.” The team should include providers of community services as well as disability advocates who can attend court and assist in educating the judge and prosecution. It may also include seasoned attorneys in this field who can consult or lend ideas. This team can demonstrate the defendant has a community willing to provide supports to prevent further incidents. Team members can serve as expert witnesses and develop a written alternative to

⁵ http://www.thearc.org/file/documents_initiatives_nccjd/NCCJDTipSheet_Attorney_CopyrightBJA.pdf

incarceration plan. For example, they can put into place supervised, supportive living and working environments. They can set up counseling and other services the individual may need. The team should also include clinical experts who can speak to the nature and manifestation of the disability.

Examples of team members include psychologists, psychiatrists, Arcs or advocacy organizations, Community Services Board staff, parents, trusted family and friends with knowledge of the accused, counselors, and attorneys who work in this field commonly. Finding experts with a personal and professional connection is ideal.

Parents may be able to help by gathering documents, writing anecdotes that show the person's ability and history in decision making, and taking or sharing short videos that demonstrate the person's capacity and abilities.

Relevant Laws

- ❖ Title II of the **Americans with Disabilities Act (ADA)** of 1990 protects the rights of people with developmental disabilities in state and local government services. Anyone accessing the court system is entitled to reasonable accommodation as needed.

Examples include:

- Communication boards, software, or other devices
- Reader or facilitation to assist the person in explaining the process
- Interpreters
- Note takers
- Modified schedules
- Alternative seating locations
- Modified bail/bond conditions
- Access to jail programming, including therapies and treatment
- Modified visitation policies

The ADA also applies to all interactions with police or law enforcement bodies. The police are required to make reasonable modifications to policies and procedures, including things like modifying the way Miranda Rights are read or testing for understanding of Miranda by having the individual repeat the rights in their own words. Once incarcerated, the ADA can require the provision of individualized instruction to understand rules and reward systems. Individuals with DD may have trouble with social interactions with other inmates and corrections officers and are more susceptible to bullying. They may need help understanding how to use their commissary account and other seemingly simple procedures within the jail. Guidelines on this subject, including examples of how some ADA suits were settled, were updated in 2017-
<https://www.ada.gov/cjta.html>.

Additionally within the ADA, is a section about the mandate to have ADA Coordinators within public entities employing 50 or more people. This mandate covers nearly all police departments, jails, prosecutor's offices, etc.

§ 35.107 Designation of responsible employee and adoption of grievance procedures:

- (a) Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.
- (b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

- ❖ **VA Code 16.1-274.2** permits certain educational records (e.g. evaluations, behavior plans) to be admitted in court when juveniles with disabilities are charged with school-based misdemeanors. The educational records will be able to show whether the behavior at hand was willful or intentional.
- ❖ **VA Code 19.2-303.6** allows for individuals diagnosed with autism or an intellectual disability who are accused of a non-violent offense to be considered for case dismissals, if the relevant parties are in agreement and there is clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability
- ❖ **VA Code 16.1-247.1** Requires that prior to the custodial interrogation of a child who has been arrested by a law-enforcement officer for a criminal violation, the child's parent, guardian, or legal custodian be notified of the child's arrest and the child have contact with his parent, guardian, or legal custodian *in most cases*.
- ❖ **VA Code 16.1-272** allows circuit court judges to waive mandatory minimum sentences for children convicted of criminal offenses and allows for the consideration of Adverse Childhood Experiences (ACEs) and adolescent development factors
- ❖ **Individuals with Disabilities Education Act (IDEA)** was passed at the federal level in 1975 and requires that all children with disabilities receive “free and appropriate public education (FAPE).” Students with possible disabilities should be identified and evaluated. If a disability is found, an Individualized Education Plan (IEP) should be developed to describe learning and transition goals for that student, as well as any services and supports that will be provided. These plans can show assessments of disability and accommodations for learning, reading, social skills, etc.
- ❖ **Section 504 of the Rehabilitation Act** is a part of federal law that prohibits disability discrimination in settings receiving federal funding, including schools. Students who do not qualify under IDEA for accommodations may still qualify for Section 504 plans. 504 plans should show assessments and accommodations needed to access educational or other services.
- ❖ In 2020, Virginia passed a number of bills on justice reform designed to make our justice system fairer and safer for all. Changes include:
 - **VA Code 19.2-303.6** Allows a court to defer and dismiss a criminal case where the defendant has been diagnosed with autism or an intellectual disability and the court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability.

- **VA Code 19.2-83.3** has a number of provisions, including a prohibition on chokeholds, requirements to de-escalate prior to using force, and mandatory de-escalation training
- **VA Code 9.1-601** creates a local option for citizen review boards empowered to investigate, fire and/or discipline officers.
- **VA Code 9.1-193** grants localities the authority to establish mental health mobile crisis co-response teams.
- **VA Code 19.2-298.02** allows prosecutors to drop charges for good cause
- **VA Code 53.1-40.02** expands earned sentence credits for good behavior for nonviolent inmates. It also creates discretion for compassionate release for terminally ill or permanently disabled prisoners, as well as geriatric release. It creates a working group to collect and assess the data resulting from this legislation for the longer term, setting up the potential to expand the program to more individuals in the future.
- **VA Code 18.2-461** makes it a Class 6 felony for someone to give a false report to the police on the basis of another person's race, religion, disability, gender or gender identity, sexual orientation, color, or national origin.

❖ 2021 Legislation

- **VA Code 19.2-271.6** allows evidence of defendant's mental condition to be entered if it shows the defendant didn't have intent required if mental illness and/or intellectual and developmental disability are present. Disability status can be considered in deciding bail and sentencing. Attorneys working in the criminal defense field must have two additional hours of continuing legal education, which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities.

Core Support Services

One of the keys is building a support network around your client that can help demonstrate a decreased likelihood of future criminal activity and that will be adding in routine support services for daily living, jobs, housing, etc. The Arc of Northern Virginia and The Arc of Loudoun provide a great deal of free information and referral for families needing these resources. Families can reach out anytime at 703-208-1119 or thearcofnova.org/answers for The Arc of Northern Virginia. These are some of the most frequently used support services available to people with developmental disabilities. More are listed in the appendices.

1. **Waivers**- A Waiver is a long-term support system for someone who will have long-term care needs, like someone with a developmental disability. Once a person is awarded a Waiver, they will have access to a menu of services offered by their Waiver. Frequently used services include attendants who work one on one with the person with a disability,

respite care so parents can have a break from care provision, group home supports where a person with a disability lives in a home shared by other people with disabilities, long term employment or meaningful day services, assistive technology, environmental modifications, nursing, and more. These services are offered at no or very low cost. Waivers do have a waiting list, but involvement with the justice system can significantly accelerate the process. Ask your client if they are already on a waiting list for a Medicaid Waiver. If so, have them contact their local Community Services Board (see Appendix IV) to update their status for the waiting list. If they are not already on the waiting list, they can apply now by contacting their local Community Services Board.

2. **Private caregivers-** Someone without a Waiver can hire a private caregiver to support the person with a disability in a variety of ways. This person can help with the development of social skills, day to day living needs, or on practicing behavior and emergency management. Care.com, sittercity.com, and craigslist.org are common, large forums for searching for these caregivers. The Arc of Northern Virginia developed and maintains a guide to help families in navigating this process with and without a Waiver. To request a copy, email lucy.beadnell@thearcofnova.org.
3. **Department of Aging and Rehabilitative Services (DARS)-** DARS is Virginia's free job coaching agency. Job coaches assist people with disabilities in job readiness (e.g. resume writing, interview preparation), job location, securing a job, and maintaining a job. Their services are limited in terms of time and scope, but they are free and sometimes have a short waiting list or no waiting list at all for our population. Getting a job increases self-esteem and increases income which can be two giant leaps towards helping someone with a developmental disability move towards successful, safe community living.
4. **Private Job coaching-** Just as families can hire private caregivers when a Waiver is not available, they can hire private job coaches if DARS services have a waiting list or are not the best possible fit. Job coaches hired privately can work as much or as little with a client as needed and can help problem solve around a possible criminal history or other work barriers. See Appendix VIII for options.
5. **Housing-** It is hard to imagine someone successfully moving on in life without a safe place to live. Depending upon age, need, and preference, some people with developmental disabilities will choose to continue living at home with family. Many adults, though, will need a plan for housing, as well as services. A 2012 Department of Justice settlement with Virginia has pushed Virginia towards more integrated housing options, so more options are becoming available. Housing alone is often not enough, so it is important to also consider services (see Waivers and private caregivers above) to explore those options.
Types of housing include the following. For a more comprehensive list, see The Arc of Northern Virginia's Transition POINTS: Housing Guide at <https://thearcofnova.org/finding-a-home/>
 - Person with a disability uses a Waiver for Supported Living where their home is owned by a service provider who comes in a certain number of hours per day.

- Person uses a Disability Waiver for Independent Living where supports are brought into a home the person acquires using a housing voucher or other affordable program (or family owned home).
 - Person with a disability rents a two-person apartment and the room, board, utilities, etc. for the roommate without a disability are covered by the Waiver in exchange for supports. This is called Shared Living.
 - Sponsored Residential housing where the person with a disability lives in the home of a paid caregiver.
 - Group Home where 24/7 staff are available to a group of 3+ people with developmental disabilities who share a living space and support staff.
 - Housing Voucher Program that allows the person to rent an affordable apartment with just 30% of their income. They must find separate means to bring in staff, including using the Waiver.
 - Individual lives in public housing or a tax credit property that has a reduced rent unit in place where a person can bring in their own support services.
6. **Transition POINTS Guides**- The Arc of Northern Virginia has free resource guides that cover early intervention and young children, special education in the school setting, futures planning, housing, jobs, and aging. They are great resources to peruse for tossing out a wide net on resource navigation. Available at <https://thearcofnova.org/programs/transition/>

The Takeaway: Top Ten Things to understand when you Work with a Person with a Developmental Disability

1. **Developmental Disabilities may be Hidden-** People with developmental disabilities may feel embarrassed by or not fully understand their disability, so they may try to mask it. Family members may not be involved or grasp the disability. Old records can be lost and many people with developmental disabilities are keen at adapting on a surface level, so you may not notice the disability right away. Whatever the situation may be, good, clear, testing is critical to show both the type and severity of the disability as well as its impact on conceptual, practical, and social skills.
2. **Individuals with Developmental Disabilities are Vulnerable throughout the Justice Process-** People with disabilities may struggle to understand a situation and then have difficulties explaining it to police. They are less likely to understand Miranda rights, how to advocate for and protect themselves, and how to navigate a correctional facility. They may struggle to aid in their defense. It is important to consider these vulnerabilities in each stage and ask for accommodations and assistance as needed.
3. **Experts, Evaluations, and Diagnosis will be needed-** If you suspect an individual may have a developmental disability, search for records of the disability with family, schools, psychologists, psychiatrists, and support providers. If needed, get an updated evaluation from an expert who is knowledgeable about disabilities and development. That expert should be willing to testify as an expert witness. Do not allow IQ scores or the use of terms like “mild disability” to be dismissed or seen as insignificant.
4. **Consider that the Disability may be the Cause of the Crime-** Developmental disabilities may inhibit someone’s ability to foresee consequences of the crime, to navigate unspoken social norms, to control behaviors, and to understand the law as it applies to them. A good evaluation should parse out how an individual’s disability manifests in their actions.
5. **Consider Mitigation and Education-** Cognitive needs that demonstrate diminished capacity and culpability, without justifying or excusing the crime, are important mitigating evidence. Work with each player in the court and justice system to educate them on developmental disabilities and their effect on actions and ramifications of one’s actions.
6. **Don’t let someone with a Developmental Disability Get Stuck on Repeat-** People with disabilities are easy targets for bullies and manipulators who may use them to commit crimes without their knowing (e.g. being a lookout). People with DD learn differently and are not likely to learn from and be deterred by a jail stay. Individuals with DD need support services and diversion to be successful.
7. **Use a Team Approach-** Once you suspect your client has a developmental disability, work on building a support team around them to aid in their defense. The team should include involved family members, diagnostic experts, supports and services providers, and someone from an advocacy organization.
8. **Know the High Cost of Jail-** For many people with developmental disabilities, a criminal conviction can mean a loss of the already limited pool of housing and job support

options they will need to succeed after incarceration. People with DD have decreased ability to navigate the social environment of jail and are more likely to end up in isolation or abused. They often struggle to understand the routines and rules of prisons, which may elongate sentences.

9. **Know the Supports Available-** Seek out supports that may aide in making the case for diversion by showing the crime is unlikely to happen now that the disability is identified and the supportive services are now in place. If jail diversion is not possible, start looking at services that can be there to support someone in being successful after release to prevent recidivism.
10. **Know the Americans with Disabilities Act (ADA)-** The ADA is a dense and rich law that offers a lot of protections and accommodations to people with disabilities at every stage of the justice system. Know the accommodations you can request and ensure that before you came on the case, the person's disability was respected and they did not waive rights or confess because they did not understand what was happening.

Appendices

Appendix I: National Center on Criminal Justice and Disability (NCCJD)

The NCCJD is a program of The Arc's national office. It is an effort to bring together issues of victimization of people with DD as well as suspect and offender issues. The center is a "national clearinghouse" on these topics. The center hosts and creates materials on justice issues related to the DD community. The program's website is <http://www.thearc.org/NCCJD>

Online programming includes:

- An attorney fact sheet- http://www.thearc.org/file/documents_initiatives_nccjd/NCCJDTipSheet_Attorney_CopyrightBJA.pdf
- A Justice Advocacy Guide- <http://www.thearc.org/document.doc?id=3669>

Appendix II: The Arc of New Jersey and the Personalized Justice Plan

The work of The Arc of New Jersey on Criminal Justice Advocacy is the basis for this guide. Their program was established in 1985 and is rich with resources. The site features personalized justice plan options to facilitate jail diversion and archived webinars for attorneys on representing clients with developmental disabilities.

Their document on a Personalized Justice Plan is below. It can be found online at http://www.arcnj.org/programs/criminal_justice_advocacy.html

PUT IT IN WRITING! : The Importance of a Personalized Justice Plan (PJP) in Providing Successful Assistance to People with I/DD in the Criminal Justice System

The Criminal Justice Advocacy Program has been a part of The Arc of NJ since 1985. Since its inception, the primary goal has been to provide an alternative to incarceration for people with I/DD. To accomplish that goal, the creation of a Personalized Justice Plan (PJP) for individual clients is the best opportunity to educate and inform the Court and counsel about needed services and support that can be provided to that individual. When accepted by the Court, a PJP is a mechanism for addressing the individual's needs while requiring the accountability for criminal actions that the criminal justice system seeks.

First, in the introduction of a PJP, we can take the opportunity to introduce counsel and the Courts to developmental and intellectual disabilities, tailoring the PJP to describe this individual's disability and how that cognitive impairment may impact on their involvement in the criminal justice system.

For example:

This individual has an established and documented developmental disability, having been found eligible for services from the Division of Developmental Disabilities. The most recent neuropsychological evaluation indicates that Mr. has "symptoms ... consistent with those demonstrated by individuals with alcohol-related neurodevelopmental disorders, including Fetal Alcohol Effects and Fetal Alcohol Syndrome."

Fetal Alcohol Spectrum Disorders (FASD) is a cluster of permanent, non-curable brain disorders and physical malformations, caused by women drinking alcohol during pregnancy. Primary disabilities caused by FASD include hyperactivity, poor judgment, attention deficits, extreme impulsivity, learning disabilities, short memory spans, perceptual disorders, anxiety, lack of social skills, difficulty with abstract thinking and difficulty retrieving information. As a result, persons with FASD show secondary disabilities such as being easily victimized, failing to learn from prior experience, failing to understand consequences of actions, showing poor frustration tolerance, having poor personal boundaries, having difficulty handling money and are easily distracted and led by others. Some but not all persons diagnosed with FASD also have an intellectual disability; 25% will have IQ scores of 70 or below. Nonetheless, a person with FASD will often have learning disabilities which interfere with sound judgment and can cause

behavioral problems that significantly impact his or her life. Fetal Alcohol Syndrome (FAS), by Sharon Davis and Leigh Ann Davis, The Arc of the United States, April 2003. For example, here, neurological testing demonstrated a full scale IQ of 79 but with many deficits of functionality related to organization, impulsivity and abstract thinking. It is, however, important in this case to note that once FAS has been diagnosed, secondary disabilities can be reduced and in some circumstances prevented. Interventions need to be consistent and constant and would need to include supervised home care and supervised employment.

Or for example:

He has an established and documented developmental disability, having been found eligible for services from the Division of Developmental Disabilities. Mr. 's neurological testing demonstrated a full scale IQ of 54 but with many deficits of functionality related to organization, impulsivity and abstract thinking. His most recent neuropsychological evaluation indicates that he has Tourette's Disorder which is associated with vocal and motor tics, hyperactivity, anxiety and compulsive behavior. According to school records, he has a history of impulsivity, learning problems and poor interpersonal boundaries.

The National Tourette Syndrome Association makes clear that Tourette Syndrome and other tic disorders occur in all ethnic groups. Males are affected 3 to 4 times more often than females. Most people with Tourette Syndrome and other tic disorders will lead productive lives. A person with Tourette Syndrome can be found in all professions. Yet the co-occurring behaviors or disorders such as learning, attention deficit hyperactivity, compulsion in addition to tics may cause significant impairment in social, occupational or other important areas of functioning

Next, a PJP addresses multiple areas, including housing, therapy, jobs, activities in the community, social skills, in other words, every area of a person's life that can impact on their ability to live offense-free in the community. The first step is to obtain as much information about the individual as possible, including psychological evaluations, medical information, family contacts and ties in the community, work history, criminal history and any other piece of information that can help identify needs. (A release of information, signed by the individual or guardian, is required).

The next step is identifying existing services that the individual may be eligible for, including disability service providers such as residential providers, supported employment and recreational activities ; and therapeutic services such as sex offender specific treatment, drug or alcohol abuse treatment, social skills training, sex education ; and any other services that can be effective in keeping an individual on a path to being a productive member of the community.

A PJP can ultimately be finalized and condensed into a letter which can be broken down into areas to be addressed such as the one below:

Residence: Currently, Mr. resides by himself, with daily supervision and support from his parents. They have been, since this incident, providing and will continue to provide

increased levels of supervision, and monitoring his behavior when in the community. They will also support Mr. in making choices so he will not enter into situations that may be more difficult than he can navigate.

Vocational Training\Employment: Mr. has been referred to the Division of Vocational Rehabilitation Services (DVRS), the state agency that provides vocational training and job placement to individuals with disabilities. For now, Mr. 's case is on hold until his legal matter has been addressed, as it has had a significant negative impact on his ability to find work. He was offered work with Acme Supermarket but the offer was rescinded upon discovery of these pending charges.

Counseling: Currently, Mr. is receiving a weekly counseling session from Dr. , Psy.D. Dr. has been working with Mr. for several years now, and will be continuing to provide therapy in the forms of role playing, sex education, socialization, and appropriate social interactions. Dr. is creating a safety plan for Mr. and his family to use as a tool to assist in making wiser choices.

Advocacy: is Mr.'s current DDD case manager, which means that she identifies community services, relays that information to the family for follow-up, and provides case management services in the community. Additionally, one of the coordinators from this program will remain in contact with Mr. and the other parties involved. We will ensure that Mr. is receiving appropriate services, as well as assist and encourage him in meeting any conditions set forth by the court.

Stipulations: These include any stipulations ordered by the court or the probation department. We will work with the probation officer and monitor the plan for the duration of the term and provide updated progress reports as requested. Also, Mr. must be willing to cooperate with the CJAP by following the PJP to the best of his ability.

While the PJP ordinarily follows this format, the actual supports and services included vary widely, since they are tailored specifically to the needs and circumstances of the individual. No two PJPs will look the same.

In contrast to the PJP language above, this client has a different set of needs:

Residence: Mr. resides in an apartment just a few hundred yards from his parents' home. They are very active and involved in his life and provide supervision to him in the evenings. Now the father of a newborn daughter, Mr. is committed to providing a stable and safe home life for her as well.

Vocational Training\Employment: Mr. is eligible for The Division of Vocational Rehabilitation Services (DVRS) and will begin vocational counseling there at earliest possibility. Mr. 's learning and functional ability will be assessed, as well as his vocational strengths, in order to best support him in procuring and engaging in full-time employment. He would use public transportation or be driven by a family member to access DVRS' services.

Counseling: Mr. has begun seeing Dr., PsyD for regular therapy sessions. He has also been attending weekly Alcoholics Anonymous meetings, and will be increasing his attendance to twice weekly. He accessed these sessions and meetings via public transportation or is driven there and back by a family member. CJAP and DDD will continue monitoring and ensuring he receives the type and frequency of counseling services needed.

Advocacy: is Mr. 's current DDD case manager, which means that she identifies community services, relays that information to the family for follow-up, and provides case management services in the community. Additionally, CJAP will remain in contact with Mr. and the other parties involved. We will ensure that Mr. is receiving appropriate services, as well as assist and encourage him in meeting any conditions set forth the court.

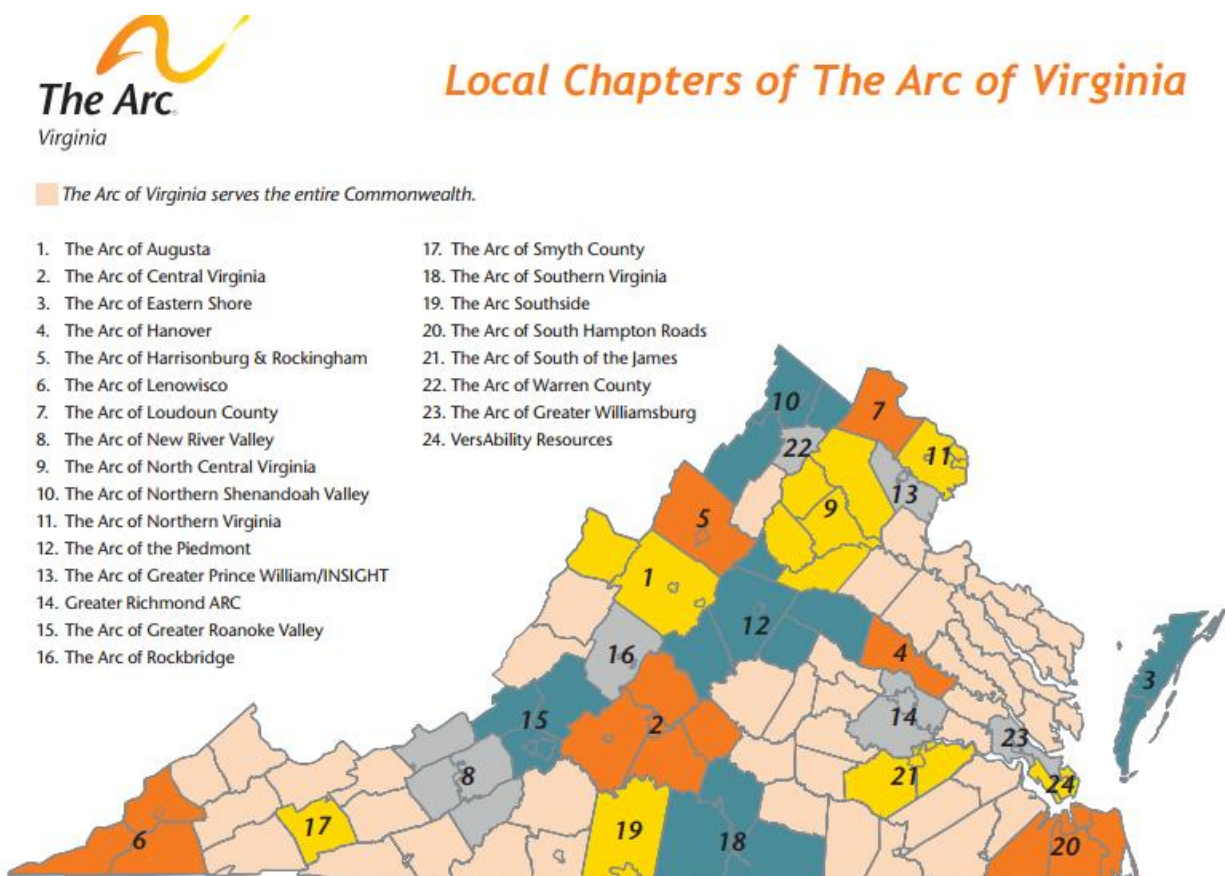
Stipulations: These include any stipulations ordered by the court. We will monitor the plan for the duration of the term and provide updated progress reports as requested. Also, Mr. must be willing to cooperate with the CJAP by following the PJP to the best of his ability.

Finally, the individual must be willing to cooperate with the recommendations in the PJP and be compliant with conditions placed on them by the Court. A case file is held open until completion of a probationary sentence, while charges are held in abeyance or while the individual completes a pre-trial program such as Drug Court, and a community care coordinator from our program coordinates services and keeps the Court or parole informed of progress.

Reducing recidivism along with successful integration into the community are the ultimate goals of this process. Organizing the information and creating a PJP makes it easier for criminal justice system professionals to understand and access the social service system, and ensures that the defendant and all involved parties understand the conditions and can work to meet them.

Appendix III: Other Arc Chapters

Virginia has 24 chapters of The Arc, all specializing in different geographic regions and topics. This guide was produced by The Arc of Northern Virginia and Paxton Campus, The Arc of Loudoun (with consent from The Arc of New Jersey). You can view the following map of chapters created by The Arc of Virginia here- <https://www.thearcofva.org/local-chapters>



Contact information for the Virginia chapters of The Arc is below. Visit <http://www.thearcofva.org/about-the-arc/local-chapters/> for updates.

Appendix IV: Community Services Boards and the Department of Behavioral Health and Developmental Services

Community Service Boards are the single point of entry for people with developmental disabilities seeking public supports in the form of Medicaid Waivers, case management, and many other services. A list of Northern Virginia area CSBs is below. You can find another CSB through this link <http://www.vacsb.org/directory.html>

Alexandria CSB

720 N. Saint Asaph Street
Alexandria, VA 22314
Phone: 703-746-3400

Emergency: 703-746-3401

Coverage Area: Alexandria City

<https://www.alexandriava.gov/CSB>

Arlington CSB

1725 N. George Mason Drive
Arlington, VA 22205
Phone: (703) 228-5150
Emergency: (703) 228-5160
Coverage Area: Arlington County
<http://www.arlingtonva.us/csb>

Fairfax-Falls Church CSB

12011 Government Center Parkway, Suite 836
Fairfax, VA 22035
Phone: (703) 324-7000
Emergency: (703) 573-5679
Coverage Area: Annandale, Burke, Centreville,
Clifton, Fairfax City, Fairfax County, Fairfax
Station, Falls Church, Great Falls, Herndon,
Springfield, Vienna
<http://www.fairfaxcounty.gov/csb>

Loudoun CSB

906 Trailview Blvd,
Leesburg, VA 20175
Phone: (703) 777-0378
Emergency: (703) 777-0320

(Loudoun Continued) Coverage Area: Aldie,
Ashburn, Bluemont, Chantilly, Dulles, Hamilton,
Hillsboro, Lansdowne, Leesburg, Lincoln,
Loudoun, Lovettsville, Middleburg, Neersville,

Paeonian Springs, Philimott, Purcellville, Round
Hill, South Riding, Sterling, Waterford, The
Plains

<http://www.loudoun.gov/index.aspx?NID=121>

Prince William CSB

8033 Ashton Avenue, Suite 107
Manassas, VA 20109
Phone: (703) 792-7800
Emergency: (703) 792-7800
Coverage Area: Manassas, Manassas Park,
Bristow, Dale City, Dumfries, Gainesville,
Haymarket, Montclair, Nokesville, Occoquan,
Prince William, Quantico, Triangle, Woodbridge
[https://www.pwcgov.org/government/dept/cs/
Pages/default.aspx](https://www.pwcgov.org/government/dept/cs/Pages/default.aspx)

Rappahannock Area CSB

600 Jackson Street,
Fredericksburg, VA 22401
Phone: (540) 373-3223
Emergency: (540) 373-6876
Coverage Area: Bowling Green, Carmel Church,
Caroline County, Ladysmith, Milford, Port Royal,
Rappahannock Academy, Ruther Glen,
Woodford, Fredericksburg, Dahlgren, King
George, Lake Anna, Spotsylvania, Thornburg,
Falmouth, Stafford
<http://www.racsb.state.va.us>

The Department of Behavioral Health and Developmental Services (DBHDS) is the state agency tasked with governing the Community Services Boards, administering the Waivers, and overseeing state developmental services. <http://dbhds.virginia.gov>

Key contacts at DBHDS include:

1. Heather Norton, Director of DD Community Supports Services,
Heather.Norton@dbhds.virginia.gov, (804) 786.5850
 - a. Contact for concerns about community supports and needed supports to promote diversion
2. Jennifer Kurtz, Northern Virginia Community Resource Consultant,
Jennifer.kurtz@dbhds.virginia.gov, (804) 461-0256
 - a. Contact for problem solving and barrier busting in Northern Virginia related to state services
3. Tim Simmons, Northern Virginia Human Rights Representative,
Tim.Simmons@dbhds.virginia.gov, (703) 207-7217
 - a. Contact for concerns of the violation of human rights of people with developmental disabilities in service settings
4. Jeannie Cummins, Northern Virginia Senior Integrated Community Options Specialist,
j.cummins@dbhds.virginia.gov, (804) 836-4308
 - a. Contact for housing concerns and needs to prevent incarceration or plan for release

Appendix V: Department of Justice Contacts

The guide briefly mentions a settlement agreement between the **Department of Justice** and Virginia from 2012 running for at least ten years. The agreement is designed to improve the availability of community based, integrated services for people with developmental disabilities.

Attorney on the case:

Kyle Smiddie
202-532-3249
Smiddie.Kyle@usdoj.gov

Northern Virginia also has a Department of Justice team based in Alexandria specializing in ADA violations. Steven has worked closely with local police departments on **ADA issues**.

<https://www.justice.gov/usao-edva/civil-division>

Appendix VI: Statewide Legal, Advocacy, and Protective Organizations

The disAbility Law Center is Virginia's public protection and advocacy organization. Their work focuses on advancing human and civil rights, legal rights, human and civil rights for people with disabilities and ending discrimination through legal representation and advocacy.

800-552-3962, <http://www.dlcv.org/>

Adult Protective Services is the state agency tasked with ensuring adults with disabilities are not abused, neglected, or exploited. You can reach them 24/7 to report suspected abuse, neglect, or exploitation and have it investigated.

888-832-3858

Child Protective Services investigates claims of the abuse, neglect, or exploitation of all children, including children with disabilities.

800-552-7096

Appendix VII: Providers of Psychological Evaluations

Northern Virginia-based resources for private psychological evaluations are below. Sometimes insurance will cover the cost of these evaluations.

Dr. Lynda Geller, Spectrum Services, 631-766-2056, based in New York but a well known expert on the intersection of DD and criminal issues

George Mason University Psychology Department, 703-993-1370 or 703-993-4200

Ashburn Psychological Services, 703-723-2999, <http://www.ashburnpsych.com/>

Associated Clinical Services, <https://thearcofnova.org/resource/provider-directory/associated-clinical-services/>

Appendix VII: Fairfax's Diversion First Program

In 2015, Fairfax launched a program called **Diversion First**, based on a national jail diversion model. Diversion First is focused on alternatives to incarceration for people with mental illness, developmental disabilities, or both, who have come into contact with the justice system for low level crimes or other offenses. Diversion First has trained personnel and services at every stage of the process, from initial police contact to jails. It is never too late to ask that someone (e.g. judge, clerk, police officer) trained in Diversion First work on the case. The program is aimed at preventing repeated encounters with the justice system in a community-based cost effective way.

There are several components to the program:

- **Merrifield Crisis Response Center (MCRC)**

This is a 24/7 crisis and assessment site where police can transfer custody of non-violent offenders for screening of disability or mental health needs. Officers working here are trained in Crisis Intervention Training. The Center aims to stabilize individuals and prevent them from heading to jail.

- **Crisis Intervention Team (CIT) Training**
This training is available to all Fairfax law enforcement bodies and entails 40+ hours of additional certified training. Anyone calling emergency services can request a CIT officer as they are better equipped to identify and work with people with developmental disabilities. You can also request a CIT trained officer within the judicial system.
- **Mobile Crisis Unit**
This team can mobilize around the county and meet individuals in crisis where they are to provide assessment and supports.
- **Mental Health Docket**
- The Diversion First initiative established a Mental Health Docket in the Fairfax County Court system where people with special knowledge and training of mental health and disability issues can hear cases.

Appendix VIII: Private Job Coaches

These Northern Virginia agencies can help individuals find and maintain jobs that will promote independence and prevent further criminal involvement.

Next Level Transition Consulting
571-332-2992
<http://www.nextleveltransition.com>

SPARC
703-338-6185
<http://sparcsolutions.org/>

Service Source
703-461-6000
<http://www.servicesource.org/services-by-state/virginia>

Appendix IX: Attorney Experts

You may want to consult with attorneys who practice in this field frequently in Virginia or out of state for ideas on defense strategies they have used, composition of justice plans, and who was part of their defense team.

Juliet Hiznay

Juliet is a Special Education attorney who has seen increasing and disturbing links between our schools and a pipeline to prisons. She worked on HB1213 that allows school documentation to be introduced as mitigating evidence in some school-based offenses.

<https://jdhezay.com/>

Sheila Costin, Holmes Costin Marcus

Sheila is a Virginia attorney who also practices in Maryland. She worked closely on the high profile defense of Reginald “Nelli” Latson, a man with autism who was waiting outside a library when police approached him after being misinformed about him having a gun.

<https://www.hcmlawva.com/>

Mark Mahoney, Harrington and Mahoney

New York attorney with expertise in individuals with autism who are high-functioning and accused of criminal offenses. He also has a number of publications.

<http://www.harringtonmahoney.com/mark-j-mahoney>

Liz Tuomey

Liz is a former staffer at the Commonwealth Attorney’s office with a focus on criminal defense and lots of expertise in disability and diversion.

<https://tuomeylawfirm.com/>