



For people with intellectual
and developmental disabilities



Position Statement Criminal Justice System

People with intellectual and/or developmental disabilities¹ who are victims, suspects or witnesses, like other residents of the United States, have the right to justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations as necessary.

Issue

When individuals with intellectual and/or developmental disabilities become involved in the criminal justice system as suspects or victims, they often face fear, prejudice, and lack of understanding. Attorneys, judges, law enforcement personnel, forensic evaluators, victim advocates and jurors may lack the adequate and appropriate knowledge to apply standards of due process in a manner that provides justice for our constituents. Individuals with intellectual and/or developmental disabilities are:

- Four to ten times more likely to become victimized, yet are frequently devalued and ignored, and their cases rarely prosecuted;
- Subject to routine exclusion because of outdated and stereotyped views of their competence to testify or denial of their needs for supports and accommodations;
- Often denied due process and effective representation at each stage of the proceedings; and
- Abused, exploited, and excluded from habilitative programs when incarcerated.

When individuals with intellectual and/or developmental disabilities come into contact with the criminal justice system, they find few organized resources for information, training, technical assistance, and referral. Moreover, people living with intellectual and/or developmental disabilities who enter the criminal justice system encounter problems in excess of their nondisabled peers, such as:

- Failing to have their disability identified by authorities who lack the expertise to discern the presence of a disability (and often individuals with intellectual disabilities compensate very well so that the disability can be somewhat hidden);

- Giving incriminating, but inaccurate “confessions” because the individual wants to please or is confused or misled by inappropriately used investigative techniques;
- Being found incompetent to stand trial because the individual cannot understand the criminal justice proceeding;
- Being found incompetent and being inappropriately placed in an institution for a long period of time in order to “regain competency;”
- Being unable to assist their lawyer in their own defense;
- Waiving rights unknowingly in the face of required warnings such as Miranda; and
- Being denied their right to speak because their testimony is not deemed credible whether as a witness, victim or defendant.

While the Supreme Court ruled in *Atkins v. Virginia*² that it is a violation of the Eighth Amendment ban on cruel and unusual punishment to execute people with “mental retardation³,” the states continue to play a major role in defining the term mental retardation and in deciding the process for consideration of the defendant’s mental retardation. Laws vary from state to state on how a

defendant can prove the presence of mental retardation. States also vary widely regarding whether it is the judge or jury who decides if the defendant has mental retardation. States may use non-clinicians who are not knowledgeable about mental retardation to make such determinations. As a result, defendants may not have their mental retardation identified because of states’ unfair and inaccurate procedures.

Position

People with intellectual and/or developmental disabilities must have the same opportunities to experience justice as victims, suspects or witnesses, similar to those without disabilities, when in contact with the criminal justice system.

As victims, witnesses, or suspects they must:

- Have their right to justice and fair treatment assured;
- Receive assistance and accommodations to effectively participate in legal proceedings;
- Have necessary supports and accommodations available so that their testimony is heard and fairly considered;
- Have access and the right to present expert evaluations and

testimony by professionals with training and expertise in their disability;

- Be treated fairly by all personnel including judges, defense lawyers, prosecutors, court personnel, forensic evaluators, law enforcement personnel, victim assistance personnel, and criminal justice policymakers;
- Have the right to an advocate, in addition to their lawyer, who has specialized, disability-related expertise;
- Have their conversations with their advocate covered under, or treated similarly to, attorney-client privilege;
 - Have available to them judges, lawyers, prosecutors, court personnel, and others who are educated about the effects of their disability;
 - Have access to victim supports and compensation as appropriate;
 - As a suspect, be protected from harm, self-incrimination, and exploitation at all stages of an investigation, including when they are questioned, detained, and incarcerated;
- When sentenced, they must:
 - Have available reasonable and appropriate accommodations, treatment, and education, as well as alternatives to

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sentencing and incarceration that include community-based corrections;

- Have access to adequately trained probation and parole officers who will treat them fairly based on their individual disability and need for reasonable accommodations;
- Continue to be exempt from the death penalty because existing case-by-case determinations of competence to stand trial, criminal responsibility, and mitigating factors at sentencing have proved insufficient to protect the rights of individuals with mental retardation (or intellectual disabilities);
- Have access to expert witnesses and professionals who are experienced in mental retardation who can accurately determine the presence of mental retardation; and
- Have their mental retardation determined by state procedures that are accurate and fair. Those state definitions and procedures must ensure that people with mental retardation (or intellectual disability) are not executed as a consequence of falling through the cracks in the system.

¹“People with intellectual disabilities and/or developmental disabilities” refers to those defined by the AAIDD classification and DSM IV. In everyday language they are frequently referred to as people with cognitive, intellectual and/or developmental disabilities although the professional and legal definitions of those terms both include others and exclude some defined by DSM IV.

²*Atkins v. Virginia*, 536 U.S. 304 (2002)

³The term “mental retardation,” though outdated, is still used in the legal and criminal justice system.

Adopted:

Board of Directors, The Arc of the United States
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