

## Communications Between Individuals With ID/DD & Law Enforcement

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## Challenge To Our Comfort Zone

Fear of the unknown  
Key to effective communication  
Recognizing our commonality  
Keeping emotions in check

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## Too quick to judge?

Lack of eye contact	Evasive
Memory deficits	Inattentive
Language deficits	Withholding info
Responding to stimuli	Uncooperative

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## Glen Ridge & the Pursuit of Justice for Individuals with ID/DD



"A rape case 25 years ago revolutionized justice for people with intellectual disabilities. They were 'unwinnable' rape cases, until prosecutors figured out the secret."

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## Laying the Groundwork

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## Learn As Much As Possible About Your Victim/Witness

Caretakers  
Counselors  
Educators  
Friends/neighbors  
Employers

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## Get To Know The Individual On A Personal Level

Investment in time

Initial meeting

Neutral ground

Comfortable surroundings

Victim Centered/Trauma Informed Approach

The person comes first, the case comes second

More than just using *People First* language

Appreciate the multifaceted aspects of the individual

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## Keep Open the Lines of Communication

Remain accessible to victim/witness & family/guardian during course of case

Be cognizant of the legal rights of the adult victim/witness with a disability

*Seek a guardian ad litem if necessary*

Manage expectations

Prepare for negative consequences

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## Maintain A Welcoming Environment

Accessible location

Ensure privacy

Consider using a child advocacy center

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## Foster a Sense of Security

Recognize individual's concerns for personal safety

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## Create Lines Of Communication

Individual may have multiple disabilities, including attention deficit disorder, that hinder maintaining focus

Limit movement

Control environmental factors

noise

lighting

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## Create Lines Of Communication (Cont.)

Adjust language to level of individual

Be concrete, not abstract

*Communication impaired*

*Recollection not impaired*

Use simple, not compound, questions

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## Prevent Intimidation

Allow witness appropriate "space"  
Moderate tone of voice

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## Maintain an Appropriate Pace

Don't expect rapid question & answer  
Be aware of witness fatigue  
Unfocused  
Allow for breaks as appropriate  
Rest  
Personal comfort  
Nourishment  
Medication  
Avoid rushing the interview process

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## Utilize Truth Seeking Questions

Use non-leading, open-ended questions  
Be aware of the *false positive* "yes" response  
Desire to please questioner  
Desire not to look foolish  
Allow victim to explain answer  
Be non-judgmental

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## The Need for Accommodation

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## Making Accommodations for the Disability

Legal system often overwhelming for persons with disabilities  
 Be accommodating in a non-accommodating system  
 Utilize the Administrative Office of the Courts Court Access Services

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## Legal Basis for Accommodation

NJ Const. Art. 1, par. 22: "A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system."

Fundamental right of access to the courts by individuals with disabilities [*Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004)]

Developmentally Disabled Rights Act (NJS 30:6D-4): "No developmentally disabled person shall be presumed to be incompetent or shall be discriminated against or shall be deprived of any constitutional, civil or legal right solely by reason of ... residence at a facility or ... receipt of any service for developmentally disabled persons."

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## A Question of Competency

Evid. R. 601 - **"Every** person is competent to be a witness..."

Limited exceptions:

Unable to be understood

Incapable of understanding duty to tell the truth

General *presumption* of competency

Not incompetent to testify merely because individual is developmentally disabled, has a mental illness or communication impairment

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## Assessing Competency

Truth vs. Lie

Punishment if lie

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## Use Alternative Means to Distinguish Truth from Lie

Colors

Clothing

Weather

Faith-based beliefs

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## Augmentative & Alternative Communication

Witness with a disability may have a communication impairment

- Vocabulary limitations to express thought
- Speech deficit/defect

Be aware of complex communication needs

Allow for intelligible communication

- Communication boards
- Voice enhancement
- Interpreter services

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## Augmentative & Alternative Communication (Cont.)

Need for demonstrative evidence

Anatomical dolls

- Use of anatomical dolls applicable to sexual assault victims under age 16 (*NJS 2A:84A-16.1*)

Anatomical drawings

Demonstrations

Replica evidence

Beware of communication techniques not accepted in the scientific community

Facilitated Communication (FC)

- State v. Stubblefield*, 450 NJ Super. 337 (App. Div.), *certif. denied* 231 NJ 405 (2017)

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## From the Interview Room to the Courtroom

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### Familiarize Victim/Witness With The Process

Take to empty grand jury room  
 Sit in on a trial  
 "Practice" in an empty court room

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### Consider the Use of Closed Circuit Testimony (N.J.S. 2A:84A-32.4)

Available in cases involving sexual offenses, trafficking involving sexual activity, endangering the welfare of a child, and domestic violence  
 Need to show substantial likelihood that victim/witness would suffer severe emotional or mental distress if testify before defendant/spectators/jury

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### Facilitating Communication in Court

Individual may seek comfort/support in person known to witness  
*State v. T.E.*, 342 NJ Super. 14 (App. Div.), *certif. denied* 170 NJ 86 (2001) – adult support person may sit in close proximity to child victim of sexual abuse while testifying upon showing of substantial need  
 Service animals

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## The Conundrum of Leading Questions

Necessary to focus witness  
 Danger of false positive response  
 Need to distinguish State's form of questioning from that of the defense  
 Give the witness the opportunity to explain on re-direct

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## Conducting *Voir Dire*

Allow for Prosecutor to assist in conducting *voir dire* of witness  
*State v. T.E.*, 342 NJ Super. 14, 26 (App. Div.) (allowing prosecutor's *de facto* administration of oath to child victim), *certif. denied* 170 NJ 86 (2001)

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## Utilize An Expert

Explain nature of disability  
 Possible use of lay opinion testimony  
 Compare cognitive ability of victim to that of peer without a disability  
 Mental age  
 Grade level  
 Consider witness order

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## Controlling the Narrative (Cont.)

Prosecution ethics & police supervision requirements  
 Initial statements to inform public  
 Statements during court proceedings  
 Align interests with advocacy groups

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