



Developmental Disabilities and the Law

Although most people with a chronic disability have no difficulty following the law, there is a small number who offend, acting out in ways deemed socially inappropriate or defined as illegal. One group of disabled adults that is of particular concern because they are so vulnerable while involved in the criminal justice system is adults with developmental disabilities (DD).

Developmental disabilities include a wide range of disabilities with mental and/or physical impairments stemming from a number of conditions including: Down's syndrome, cerebral palsy, fragile x syndrome, mental retardation, attention deficit hyperactive disorder, autism spectrum and fetal alcohol spectrum disorder. Spectrum disorders are an umbrella term for disabilities that can range in severity and effect, meaning they can affect each individual differently.

A developmental disability can be caused by many conditions and events that happen during pregnancy, during birth or during a child's development, including chromosomal defects, hereditary or genetic factors, issues with the pregnancy or birth, exposure to alcohol or maternal malnutrition before birth, injury or disease during childhood and environmental factors such as neglect or deprivation, leading to poor medical treatment or malnutrition.

In about 50% of the population with a development disability, the cause cannot be determined (BC Govt 2007). No matter what the cause or the degree of impairment, what all developmental disabilities have in common is that they are chronic conditions that develop while the brain is forming. These conditions affect cognitive functioning and cannot be cured.

The Community Living Authority Act is the legislation that governs how services are provided to persons with developmental disabilities in British Columbia. It was passed in 2004.

The Community Living Authority Act defines a "developmental disability" as significantly impaired intellectual functioning that:

- Manifests before age 18,
- Exists concurrently with impaired adaptive functioning, and
- Meets other prescribed criteria.

The individual's IQ generally falls below about 70, alongside the above requirements, as found in the DSM-IV, 4th Edition.

Community Living British Columbia (CLBC) is a provincial agency, established in 2005 to support persons with developmental disabilities. Support consists of funding programs that address housing, employment, social and life skills. This support is available to individuals who have been diagnosed with a developmental disability before the age of 18, and who are age 19 or older. CLBC also provides support to individuals who face challenges with day-to-day living, and have either an autism spectrum disorder, or a fetal alcohol spectrum disorder. CLBC services do not extend into the criminal justice area.

As of March 31, 2012, 14,241 persons with developmental disabilities were registered for services with CLBC; a 5.6% increase over the previous year, and a 37% increase over the last 5 years.

Rights and Mental Illnesses

Laws for people with mental illnesses are much more established than laws for people with developmental disabilities. Those with mental illnesses are covered under both the BC Mental Health Act and the Criminal Code of Canada. These two legislative pieces cover protection in sentencing, treatment, and defences.

Rights and Developmental Disabilities

In BC, the Community Living Authority Act of 2004 is the legislation that governs how services are provided to persons with developmental disabilities in British Columbia. It mandated the creation of a Developmental Disabilities Board to provide services for eligible individuals.

With respect to the criminal justice system, the central right for persons with developmental disabilities is the equality right found in the Canadian Charter of Rights and Freedoms, section 15.(1). This states that “every individual is equal before and under the law and has the right to equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or

physical disability”. As well, Sections 7 through 14 protect legal rights, including the right to remain silent and the right to legal counsel.

Developmental disabilities and Mental Disorders

The prevalence of developmental disabilities in the general population is between 1% and 3%. Within this population, approximately 40% will also have a mental illness (CAMH 2011) – about twice the rate found in people without a developmental disability. When a person has both a developmental disability and a mental illness, it is called a dual diagnosis (also called comorbidity or concurrent disorders).

It is important to understand that a developmental disability is not a mental illness. A developmental disability is a lifelong impairment that cannot be cured, whereas a mental illness is an episodic disorder which originates in the chemistry of the brain. Mental disorders have the potential to be treated with medication and therapy.

Issues with these rights

Although the equal treatment and protection from discrimination provided by the equality rights in Section 15 of the Charter is an advancement of the rights of the developmentally disabled, the equal application of the Criminal Code to the developmentally disabled can prove problematic. Because the Criminal Code does not contain any laws or defenses for this specific population, the criminal justice system may treat the developmentally disabled as if they are fully capable of understanding both their rights and responsibilities as a citizen, when they may not be capable of that.

Sections 7 through 14 of the Charter protect Legal Rights, but those with a developmental disability often lack the capability to comprehend these rights and make informed choices.

The police also lack a structured piece of legislation to follow when they come in contact with or are investigating crimes alleged to be committed by a developmentally disabled person. Provisions under the Mental Health Act are often used in these situations (Canadian Research Institute).

Legal Capacity

Persons with developmental disabilities are subject to the Health Care (Consent) and Care Facility (Admission) Act, which states that every adult who is capable of giving consent has the right to agree or refuse medical treatment, and that the adult should be involved as much as possible in the planning and decision-making surrounding treatment.

However, as is pointed out in “Planning guidelines for mental health and addiction services for children, youth and adults with developmental disability”, the legal system is “based on the premise that people are mentally capable and able to understand what is told to them, and therefore are capable of making reasoned decisions for themselves. People with developmental disabilities have a range of abilities and disabilities, which may make it difficult for them to make valid decisions at times. People with developmental disabilities are vulnerable in systems that do not accommodate their needs or even recognize that there is a need to accommodate” (BC Ministry of Health 2007).

Research indicates that those with a developmental disability are 4 to 10 times more likely to be a victim of a crime than those without a developmental disability (Sobsey 1994). A US study indicates that those with a developmental disability represent 4% to 10% of the prison population (Petersilia 2000) However, due to a lack of a consistent protocol for identifying developmental disabilities and the different levels in severity, estimates determining the number of persons with developmental disabilities who come into contact with the Canadian criminal justice system vary widely - anywhere from 2% - 40% (Jones).

Vulnerability in the criminal justice system – Contributing Factors

Although the studies cannot agree on how many persons with developmental disabilities are involved with the criminal justice system, they all agree that persons with developmental disabilities are vulnerable within the system due to the system not being equipped to support their needs. Factors that contribute to this include characteristics that persons with developmental disabilities share that increase their vulnerability, a lack of knowledge about the criminal justice system on the part of people with developmental disabilities and their caregivers, a lack of knowledge about developmental disabilities within the criminal justice system, and a lack of resources and accommodation for people with developmental disabilities who are involved with the criminal justice system

Contributing characteristics of persons with developmental disabilities

Many people with developmental disabilities share characteristics that increase their vulnerability in the criminal justice system.

At risk of victimization because of inexperience

Because they often lack the life experience to critically judge the legality of an action, those with developmental disabilities are easy targets for the criminal element, both as offenders and as victims. Unable to determine whether an action is legal or not, they tend to believe what is told to them, making them

easy to victimize, as well as easy to recruit in to criminal actions and easy to blame for crimes that are actually perpetrated by someone else. This occurs both in the community, and when they are incarcerated (Smith, Polloway, Patton & Beyer 2008).

Easily intimidated, people pleasing

Although it's not true of all people with developmental disabilities, many have a very gentle nature, are easy to intimidate and tend to want to please others. These tendencies can be leveraged by others to bully those with developmental disabilities in to participating in criminal activity. Sometimes, overt intimidation is not required. As with other people who feel ostracized, those with developmental disabilities may make significant compromises to maintain their standing in their social group, including agreeing to participate in criminal activity. These personality traits also contribute to their victimization by caregivers and others who are close to them, because the person with developmental disabilities may be unwilling to report abuse to authorities.

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These personality traits can also negatively impact them when interacting with the police. Police interrogation techniques often rely to an extent on intimidation, which can cause people with developmental disabilities to confess to crimes they didn't commit. To ensure the appropriate consent is obtained and that the person fully understands their rights, it is imperative that police establish whether a person has a developmental disability prior to interviewing them.

Limitations on intellectual functioning and adaptive functioning

Persons with developmental disabilities may lack the ability to understand abstract legal concepts, may not understand cause and effect, or may not have the cognitive ability to understand what is told to them. They may also have difficulties with memory, with language, or with performing tasks most people take for granted. Challenges with adaptive functioning skills, such as reading skills, telling time, or using the

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transit system can have a significant impact on a person's ability to work with a lawyer, to meet with a probation officer, or to follow the rules in a correctional setting.

Behaviors

Persons with developmental disabilities may lack impulse control or may display inappropriate emotion that criminal justice staff may misinterpret. A very common behaviour for those with developmental disabilities is to try to hide their impairment. Especially with those who are high-functioning, people with developmental disabilities may go undetected until the accused is far into the criminal justice process. In addition, they may decline help offered to the developmentally disabled in an effort not to be labelled as such.

A lack of knowledge about the criminal justice system

Some people with developmental disabilities may lack the cognitive ability to know which behavior is criminal and which is not. More importantly, many people with developmental disabilities and their caregivers lack the knowledge to successfully navigate their way through the criminal justice system. A lack of knowledge also makes it difficult for persons with developmental disabilities to interact with the police, to understand the role of legal representation, and to function in the correctional system. A lack of knowledge on the part of caregivers makes it difficult for them to provide assistance.

A lack of knowledge about developmental disabilities

A 2006 study indicated that police, legal representatives and correctional staff all identified a need for more training and knowledge regarding persons with developmental disabilities, especially in the area of identifying those with developmental disabilities (Pauls, Bailey & Pearson 2006).

A lack of resources

There is both a lack of resources and a lack of accommodation for people with developmental disabilities who are involved with the criminal justice system.

Lack of legislation

There is a lack of legislation and protocols that specifically address people with developmental disabilities involved in the criminal justice system.

Lack of Information about available resources

There is a lack of information about what programs and resources are available for persons with developmental disabilities. This lack of information makes it difficult for persons with developmental disabilities, their caregivers and criminal justice staff to access resources that could deal with the underlying causes of the criminal behaviour in the first place. Persons with developmental disabilities are further hampered in accessing programs by their lack of skill at navigating their way through the social safety net.

Lack of Appropriate resources

There is a lack of appropriate resources for dealing with the underlying causes of criminal behaviour for the developmentally disabled as well as a lack of appropriate resources for intervening when behaviour begins to spiral in to criminality. Programs in the community or in a correctional setting geared towards cognitive behavioural therapy, such as anger management courses or a substance abuse treatment may not be able to accommodate a person with a cognitive impairment or who cannot follow the conversation in a group setting. Especially for those with multiple disabilities or with co-occurring substance abuse problems, there are few programs that will accept them as clients, and fewer still that can address their specific needs. Other behavioural therapy models have been more effective in developing skills and correcting behaviours in persons with developmental disabilities.

Conclusion

The existing systems of the criminal justice system do not serve persons who have a developmental disability. It is the responsibility of all criminal justice system stakeholders to ensure appropriate resources and supports are provide to persons in need.

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