A Police Officer’s Guide

When in Contact With People Who Have an Intellectual Disability

About 3 out of every 100 people have an intellectual disability, and as a law enforcement officer, there is a chance you will come in contact with a person who has this disability. Title II of the Americans with Disabilities Act (ADA) of 1992 prohibits state and local governments from discrimination against an individual with a disability. Police municipalities, sheriff’s departments, and state patrolmen are covered under Title II, and are responsible for making sure programs, services, and activities provided by police are readily accessible to and usable by people who have disabilities. (28 C.F.R § 35.150 [a]; The Americans with Disabilities Act Title II Technical Assistance Manual, U.S. Department of Justice)

In October 2010, President Obama signed Rosa’s Law, which eliminated the use of the phrase “mental retardation” on a federal level. The NYS Education Department has also eliminated the use of this term in identifying students. Although it is still commonly used, “mental retardation” is no longer acceptable in identifying individuals. The proper term is “intellectual disability”, a term that has been accepted and used internationally for years. The United States is the last progressive country in the world to officially drop this derogatory term and embrace the more appropriate identification of an individual who has cognitive and/or intellectual challenges.

How do you make sure your activities are readily accessible to people who have an intellectual disability?
In order to provide readily accessible services, there are some helpful tips and strategies to use whenever in contact with someone who has an intellectual disability:

1. IDENTIFY
What is intellectual disability?
People with an intellectual disability have difficulty in their ability to learn. The effects of this condition vary considerably among people, just as the range of abilities varies among those who do not have an intellectual disability. Many people with an intellectual disability live independently in the community and may not appear to have a significant disability. However, there are people who are seriously affected and have difficulty learning skills needed to live independently in the community, such as self-care and economic self-sufficiency. Whether the individual has a mild or severe disability, all people with an intellectual disability are covered under the ADA and may need assistance.

Why is intellectual disability sometimes more difficult to detect than other disabilities within individuals?
The majority of people with an intellectual disability have mild intellectual disabilities which makes it a difficult disability to identify. Many people with intellectual disabilities want to be thought of as “average.” They may try to hide their disability in order to be liked or accepted by others, especially authority figures.
What is the difference between an intellectual disability and mental illness?

Intellectual disability refers to below average abilities to learn and process information, but mental illness refers to a person’s thought process, moods, and emotions. Intellectual disability generally occurs before a person reaches adulthood, but mental illness can occur at any time in a person’s life and everyone is prone to mental illness. Intellectual disability refers to below average intellectual functioning, but mental illness has nothing to do with intelligence. People with mental illness can have below average, average, or above average intelligence.

How can I tell if someone has an intellectual disability?

There is often no way of knowing if a person has an intellectual disability, but there are traits to look for in identifying an individual with this disability.

Look for clues in the person’s communication, behavior, and reaction to police contact or emergency responders.

Communication:
The individual may…
- Have limited vocabulary or a speech impairment
- Have difficulty understanding or answering questions
- Have a short attention span

Behavior:
The individual may…
- Act inappropriately with peers or the opposite sex
- Be easily influenced by and eager to please others
- Be easily frustrated
- Have difficulty with the following tasks:
  - Giving accurate directions
  - Making change
  - Using the telephone and phone book
  - Telling time easily
  - Reading and writing

NOTE: A person exhibiting these traits does not necessarily mean the person has an intellectual disability. If there is any question about someone having an intellectual disability, assume the person does and use the tips in this handout to ensure that your contact and communication is clear, especially if the person is read his or her Miranda rights.
Police Contact:

*The individual may…*

- Not want the disability to be noticed
- Not understand rights
- Not understand commands
- Have the tendency to be overwhelmed by police presence
- Act very upset at being detained and/or try to run away
- Say what he or she thinks others want to hear
- Have difficulty describing facts or details of offense
- Be the last to leave the scene of a crime, and the first to get caught
- Be confused about who is responsible for the crime and “confess” even though innocent

**NOTE:** Someone with an intellectual disability may be able to do only one of the above tasks while others may be able to do all of these tasks. These are only preliminary questions to check for the presence of a disability. Answers given by the person should not be used as incriminating evidence. Assume the person has an intellectual disability if you notice any behaviors.

2. **Simplify Communication**

*How do I talk to someone who has an intellectual disability?*

There are no hard and fast rules to use when talking to someone with an intellectual disability. The communication techniques below may be helpful, and can even be used to improve communication with people who have similar disabilities, such as traumatic brain injuries, learning disabilities, and Alzheimer’s disease.

**Remember:**

- Speak directly to the person
- Keep sentences short
- Use simple language, speak slowly and clearly
- Ask for concrete descriptions, colors, clothing, etc.
- Break complicated series of instructions or information into smaller parts
- Whenever possible use pictures, symbols, and actions to help convey meaning

**Be Patient:**

- Take time giving or asking for information
- Avoid confusing questions about reasons for behavior
- Repeat questions more than once or ask question in a different way
- Use firm and calm persistence if the person doesn’t comply or acts aggressive
• When questioning someone with an intellectual disability don’t ask questions in a way to solicit a certain answer. **Don’t ask leading questions.**
• Phrase questions to avoid “yes” or “no” answers, ask open-ended questions (e.g. “Tell me what happened.”)

**Keep in Mind:**
• Don’t assume someone with an intellectual disability is totally incapable of understanding or communicating.
• Treat adults as adults; don’t treat adults who have an intellectual disability as children.
• When communicating with someone who has an intellectual disability, give him or her the same respect you would give any person.

**IMPORTANT NOTE:**
Most people who have an intellectual disability do not like being called “retarded” or even have the word “retardation” used in reference to their disability. When speaking to the individual, use the phrase “person with a disability.”

3. **PROTECT THE INDIVIDUAL’S RIGHTS**
Although it’s **not** an ADA requirement, when a person who is suspected of having an intellectual disability is questioned or interrogated about involvement in criminal activity, it is a good idea to have a guardian, lawyer, or support person present to ensure that the individual’s rights are protected.

**Do people with an intellectual disability understand the Miranda warnings?**
• People with an intellectual disability often do not understand the Miranda warnings. In fact, many individuals with an intellectual disability often answer yes after they are read the Miranda warnings **even when they do not understand their rights.** People with an intellectual disability usually want to please police officers and may appear to incriminate themselves even when innocent of any crime. They often fake greater competence than they actually possess. Because this puts people with an intellectual disability at an unfair disadvantage when being questioned, **you should not ask questions about criminal activity until the person’s lawyer is present.**
• When reading the Miranda warnings to someone with an intellectual disability, or to others who may have difficulty understanding, use simple words and modify the warnings to help the individual understand. It’s important to determine whether the individual genuinely understands the principles, protections, and concepts within the warnings.
• Ask the person to repeat each phrase of the Miranda warnings using his or her own words. If the person simply repeats the phrase word or word, check for understanding by asking
questions that require the individual to use reasoning abilities and think conceptually. For example, you can say, “tell me what rights are, give me an example of a right you have, tell me what a lawyer is, how can a lawyer help you, why is a lawyer important, why do you want to talk to me instead of a lawyer, can you explain to me why you don’t have to talk to me,” etc.

- A person with an intellectual disability may be able to recite the entire Miranda warnings, or even a simplified version, but he or she usually cannot understand its meanings or the implications of his or her responses.
- It’s not an ADA requirement, but you may want to videotape the interview and make sure questions are asked clearly and distinctly. Use open-ended, non-leading questions. Ask questions in a straightforward, non-aggressive manner. If you believe the person has an intellectual disability, let the individual’s attorney know.

4. KNOW THE RESOURCES

- Know what options are available for the person with an intellectual disability other than jail, especially when the individual has not committed a crime. Realize that you are not alone when you encounter people with an intellectual disability. Once you suspect that someone has an intellectual disability, contact an agency in the community that can provide advice about how to best handle the situation.
- Know and use alternatives to arrest when arrest is not the best response. For example, arrest is inappropriate when used to hold an innocent, lost person with an intellectual disability in jail only because there seems to be no other alternative. Some alternatives to consider include contacting a parent or guardian, the place of the residence, agencies on developmental disabilities, or an advisor or expert who is familiar with people who have this disability.

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