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AND JUSTICE FOR ALL... UNLESS YOU HAVE AUTISM ***What the Legal System Needs to Know About People*** ***With Autism Spectrum Disorder***

Ideas shared by Barbara T. Doyle, M.S. and Emily Iland, M.A.

One goal of human services is to ensure that individuals with Autism Spectrum Disorder (ASD) do not become involved in legal difficulties or have problematic police encounters. However, when they do, providers and families need to inform the personnel in the police and legal system about the person's diagnosis and the features of ASD that are relevant to the situation. A clear understanding of the features of ASD can have a profound impact on the individual's ability to be treated fairly. A lack of understanding and awareness on the part of those in the police and legal systems can result in very unfavorable outcomes.

This handout focuses on the core features of ASD and explains how these features can affect an individual on the spectrum, especially in situations involving law enforcement and criminal justice. Suggestions are provided to help service providers and families communicate key information to the relevant personnel in the criminal justice system.

The diagnosis of Autism Spectrum Disorder (autism, pervasive developmental disorder, Asperger Syndrome and related disorders) is ALWAYS relevant and needs to be explained to police and legal personnel. If a person with ASD is involved in legal or police matters, here are some important points to remember:

- ✓ Parents, caregivers and/or staff who know the individual need to **quickly** provide information about how the individual thinks, communicates, interacts and understands others. Always provide the information in writing **and** in person to all authorities involved in the situation. It is a good idea to prepare this information in advance, so it is ready to share in an emergency.
- ✓ A diagnosis of ASD is as relevant to police and legal proceedings as a diagnosis of Intellectual Disability or mental illness would be, no matter how bright, high functioning, or verbal the individual may be.
- ✓ A diagnosis of ASD means that the person **has** a developmental disability, even if there is no cognitive impairment. If an individual is considered "autistic like," has "autistic tendencies," or is "probably on the spectrum," providers and families need to explain the features of ASD that the person **does** have. It is safest to explain as if the person had an official diagnosis of ASD.
- ✓ The diagnosis of ASD is important no matter what other diagnoses the individual has.
- ✓ When involved with law enforcement or the justice system, the individual with ASD will usually be responding to the best of her or his ability in the moment. Responses to

others may be driven by the person's neurological responses, internal state, influences from various media, sensory input, and previous experience.

- ✓ People with ASD are neurologically inconsistent in the way they respond and perform, depending on emotional state, familiarity with the people and situation and various sensory experiences. For example, they may be very talkative in a particular setting at a particular time and later be **unable** to speak well in the same setting.

Legally Relevant Features of Autism Spectrum Disorder

Each individual with ASD is unique. However, people with ASD share some common features that law enforcement and justice system personnel need to know about. It is essential to communicate how a particular individual is impacted by ASD, and how that affects the person's actions, interactions, and reactions.

A. People with ASD have significant problems in both verbal and non-verbal communication. They can have difficulty sending and understanding messages. This can result in unexpected behavior or interactions. Here are some important factors to understand about communication in individuals with ASD:

- The individual with ASD is likely to have a processing delay that affects their ability to respond to spoken language. The person may not respond immediately to orders or commands because of the delay processing information that is told to them. The processing delay usually increases in times of stress or in unfamiliar circumstances. People who do not understand autism as a disorder of information processing may assume that the individual is refusing to comply. Unnecessary punishment or force may be used as a result.
- The individual may not answer immediately when spoken to or may not consistently respond to initiations of others, leading others to interpret the individual as rude, uncaring, unconcerned, inattentive or aloof.
- Facial expressions and body language will not necessarily reflect the internal states or emotions of the individual. The person's "affect," or level of emotion in the face, may seem flat or expressionless. Some people's faces appear "fixed" into a grin or grimace. The person's affect is beyond their control. Unfortunately it is often misinterpreted as meaning that the individual is not interested or concerned about the situation at hand, or that they find it funny. When the person does not show emotion in their face, they are often misinterpreted as not caring about what happened or not concerned about the consequences of their actions.
- The individual with ASD may not respond in a typical way to the facial expressions, gestures, tone of voice or physical proximity of others. This may lead officials to wrongly interpret the individual as rude, sulky, uncaring, detached, lacking remorse or oppositional.
- The individual may interpret what is said literally, missing information that is inferred or implied. This may cause the individual to seem evasive, hostile, oppositional, or intentionally obstructive.
- The individual may have problems distinguishing what is known **now** from what was known in the past. The individual may appear to have known something in

the past that has been learned by the individual more recently. If asked if s/he “knew” what another person was going to do, for example, the answer may be affirmative because s/he knows now, even though at the time in question, s/he did not know. Once the individual with ASD knows what has happened, they may be unable to recall a previous time when they did not have that knowledge.

- ❑ The individual may use speech out of context, talking about a topic that seems irrelevant. It could look like the individual is trying to “change the subject” or distract others, when this behavior is actually related to ASD.
- ❑ The individual may have greater expressive language skills than receptive language skills. This means s/he may be able to say more than s/he actually understands. This can lead to an overestimation of the individual’s actual level of functioning and understanding.
- ❑ The individual may have formal or odd or pedantic speaking habits. If someone sneezes, for example, the individual may tell a judge or police officer that he should say “God Bless You,” which is not appropriate for the circumstances.
- ❑ The individual may have memorized responses to certain communicative cues. For example, if asked, “How are you feeling?” the individual may always say “Fine.” This can lead officials to believe that the individual is not taking the situation seriously enough or is not feeling remorse or concern.
- ❑ The individual may not use eye contact in a typical way. S/he may prolong eye contact in a way that is uncomfortable for others, or may avoid eye contact even when told, “Look at me.” Others may conclude that the individual is discourteous or manipulative. They may think the person has something to hide or has “guilty knowledge.”

B. People with ASD experience significant problems in social interaction and reciprocity. This results in social behaviors that need to be explained and understood such as:

- ❑ The individual may not respond to or use typical social conventions such as greetings, handshakes and “small talk.” Individuals with ASD may unknowingly break social conventions, for example asking questions that are too personal.
- ❑ The individual with ASD may assume that the person they are talking to knows what s/he knows. This assumption can lead the individual to fail to provide important and relevant information, because s/he believes the other person knows already.
- ❑ People with ASD may have a level of social naiveté that does not match their intelligence in other areas. It may be very easy for others to fool, trick, manipulate, confuse or use an individual with ASD.
- ❑ The individual with ASD may be unable to predict the behavior of others by watching or listening. S/he is not likely to pick up on signals or cues that others pick up on to predict what someone is going to do next. Tone of voice, gestures, implied or inferred information, etc. can easily be missed by a person with ASD. S/he may predict and interpret the behavior of others more at “face value” which can cause the person to be manipulated or victimized.

- The individual with ASD may be very innocent for their age, or guileless. They can be easily led astray by others, especially if enticed. They can be influenced and controlled by others, even when they appear to be otherwise “high functioning” and capable.

C. People with ASD usually have restricted, repetitive, stereotypic and unusual patterns of interests, behavior and activity. This results in behavior that needs to be explained and understood such as:

- A person with ASD may keep coming back to the same topic many times in a repetitive way. This leads others to believe that the individual is trying to avoid other topics or is “not listening.”
- The individual may try to steer the conversation to their own area of special interest when it is not relevant to the situation, and not understand how this is perceived by others.
- The individual may not shift topics when the conversational partner does so, leading others to assume that the individual is self-absorbed, uncaring about the needs of others, or being evasive.
- The individual may use memorized dialogue and movements from movies and television. When something at present reminds them of the scene in the movie, s/he may use this memorized speech. This inappropriate connection can cause others to believe that the individual is not in touch with reality. “Movie” talk and actions may be construed as threatening and result in the use of excessive physical control.
- The person with ASD may have a “black and white” interpretation of situations. For example, a person who paid for a movie ticket but missed the first five minutes might go back to the movie theatre and walk in without paying to see the five minutes she missed, because she paid for a whole movie but did not get one.
- The individual with ASD may be “rule bound” and feel a strong need to obey learned rules. For example, if the individual does something against another person, s/he may need to apologize because s/he has learned the rule “if you hurt someone you must apologize.” This can lead to unwitting violations of restraining orders or other rules.

D. Individuals with ASD may have sensory differences that are relevant in any encounter with law enforcement and first responders.

- Sensory differences in ASD include over-sensitivity to sensory input, such as sound, smells, texture, or touch. They may be upset by noises, lights, smells or other elements in the environment that are tolerable to everyone else, but that feel aversive or even painful to them. They may have an aversion to being touched, or even having people very near them.
- Individuals with ASD may be “sensory defensive,” meaning that they are trying to protect themselves from the input that they find disturbing or painful. The person

may feel anxious even when the stimulus that bothers them is not present, thinking that the “bad thing” (like a siren noise) may happen at any moment.

- ❑ Individuals with ASD may be “sensory seeking.” They feel a need for more sensory input than most people need. They may chew on objects, touch things excessively, or use repetitive movements like rocking or flapping. Seeking behaviors often increase when people with ASD are stressed.
- ❑ The individual may experience “sensory overload,” which results from too much sensory input coming into the brain at one time. People with ASD describe sensory overload as becoming very overwhelmed quite suddenly.
- ❑ Sometimes individuals “shut down” from sensory overload. The individual may not be able to take in more information or understand what is said.
- ❑ At other times, sensory overload causes individuals with ASD to have a fight-or-flight, response similar to a panic attack. This can lead to extreme behavior such as running out of a room or trying to hit or push others away, unintentionally injuring self or others. The individual may also over-react when touched by another person, particularly if the touch is unexpected, sudden, or from behind.

Case Scenarios

Here are some case stories based on real situations that illustrate the difficulty and vulnerability that is experienced by many individuals with ASD due to the features of the disorder. Some details about these cases have been changed to protect privacy, but stories like these are appearing in the media more and more frequently.

These cases illustrate the why officials in law enforcement and the justice system need to have a clear and complete understanding of the impact of Autism Spectrum Disorder on a person who is accused of a crime. The problems and difficulties in these cases also signal the kind of intervention that is needed for individuals with ASD. Individuals with ASD need intervention and support as they grow up to have a safer life, the sooner the better. Focusing on specific safety behavior, prioritizing goals, and explicitly teaching needed skills can help prevent these types of unfortunate situations from occurring.

1. A young man with ASD (in this case, a diagnosis of pervasive developmental disorder) lives in a small town. He likes a young woman in the town. He often goes up to her and talks about his favorite topics (restricted interests). She tries to “brush him off” but he misses the subtle, social cues (social interaction problem). He begins to wait for her in places where she is likely to be, just so he can see her (repetitive behavior, social naïveté). She feels stalked and harassed. She tells him she has a boyfriend, but this does not deter his attentions (does not understand what is inferred). He feels happy when he sees her and thinks that maybe someday she will be his girlfriend, like Superman was to Lois Lane (confusion with what was seen in movies, and under-developed social skills for his age.)

The young woman files a restraining order. This upsets the young man and he decides to write a note of apology and put it in on her desk at the office where she works, while she is out to lunch (rule bound, he is “supposed” to apologize). He does so, violating the restraining order and is arrested. Later when asked why he violated the restraining order he insisted that he did

not. It had been explained to him that he had to stay away from “her.” In his mind, he did stay away from her. He just went close to her desk (literal interpretation of language.)

CHANGING OUTCOMES

Law enforcement and justice officials need to recognize that the features of Autism Spectrum Disorder are **always** relevant when someone with ASD is accused of a crime or has committed one. Autism should be considered a mitigating circumstance to be taken into account in determining how to proceed with the case. In legal cases involving people with ASD, judges, lawyers, clerks, jurors, law enforcement officials and others must be provided with clear and detailed information about the effects of autism on a person’s thinking, learning, behavior and social interaction.

Educational programs, rehabilitation programs, and other alternatives to jail time (also called diversion programs) should also be considered for people with ASD who are found guilty of a crime. Because of the nature of developmental disability, a punishment like jail time does not teach new behaviors or prevent similar problems from happening in the future. More and more communities are creating alternative programs for better outcomes.

In addition, parents, teachers, caregivers and staff need to help people with ASD learn how to read and respond to multiple cues that tell them that others do not want their attention. Begin this training early in life. Write it as a goal. Review it at each changing stage of development because “signals” change for each age group. Use information from typical peers to support learning.

- Use video and television programs to review how people respond to one another and why.
- When teaching any social rule, also teach the exceptions to the rule right away. In this case, the young man needed to know that you do not **always** apologize to someone.

2. A young man with ASD (in this case a diagnosis of autism) plays on a co-ed basketball team in his neighborhood. The other young men recognize how naïve he is and decide to play a trick on him (socially naïve). They tell him that it is the birthday of a pretty young woman on the team. They tell him that she loves birthday spankings particularly on her bare bottom. They tell the young man with ASD that if he spanks the girl on her bare bottom she will probably kiss him and be his girlfriend.

After the game, the young man approaches the girl. He sings “Happy Birthday” (rule bound) while trying to pull down her shorts, and spanks her. The young woman screams and other people restrain the young man. He is terrified and becomes aggressive. He tries to defend himself from what he believes to be an unprovoked attack (sensory overload, social and communication issues, reacting in a way he saw in a movie). Several people are injured. He is arrested for battery and sexual aggression.

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In addition, parents, teachers, caregivers and staff need to help people with ASD learn about physical contact and touch. People with Autism Spectrum Disorder need specific instruction from very early in life about who can be touched and how, as well as who can touch them and how.

- Use dolls, puppets, video, role play, visual cues such as drawings and modeling.
- Create rules so that a person with autism can “check in” with a trusted person *before* touching anyone else.
- Play the “What If” game and describe possible scenarios in which a person with autism could be tricked or taken advantage of. Practice a variety of responses including seeking a trusted person to ask, or walking away to a safe place.
- Teach people with autism to give two different responses to others: one response if the person says “yes” and a *completely different* response to give if a person says “no” or “stop.” Practice at every age and stage of life in a variety of environments.
- Educate peer groups so that children and adults who associate with a person with autism will feel free to help or support the person with autism to prevent bullying and victimization.

3. A young woman with ASD (in this case, a diagnosis of Asperger Syndrome) is in a small shop and sees a purse that she knew her mother wanted to have. She decides to take it to her mother. She intended to pay the next year because she had seen a sign on the shop window that said, “Take home what you want today with no payments until January of next year!” (Literal interpretation, language misunderstanding, and missed inference). She is arrested for shoplifting.

In court, she sits very still. She avoids eye contact with the judge and lawyers and only sometimes answers when spoken to (social reciprocity problems.) Her face has a fixed grin type of expression on it (non-verbal communication issue) and she continuously lines up some pencils on the table appearing to be fully concentrated on this task (restricted, repetitive behavior.) The judge gives her the maximum penalty possible stating that her grin was an insult to the court, that she did not pay attention to the proceedings, and that she showed no remorse.

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In addition, parents, teachers, caregivers and staff need to help people with ASD learn how to know when they need additional information, and from whom to obtain that information. They need to be able to identify when something seems unusual or exceptional and how to get more information before acting.

- Create rules (such as “we always pay for things in the store”).
- Teach the exceptions to the rule (such as “unless the store is on fire.”)

4. A woman with ASD (described all of her life as “autistic-like”) has a car. She lends the car to a man who tells her that he wants it to use to go buy groceries for his family. The man commits serious crimes while using the car. Later, the woman is arrested as an accomplice. Her attorney decides not to mention the “autistic-like” diagnostic information to the court because he believes the court would think that the attorney was trying to prejudice the court.

In court, the woman displays a flat affect and shows no apparent response, no matter how serious or upsetting the testimony becomes (nonverbal communication problems.) She does not speak when spoken to in court (inconsistent neurological functioning and issues in social reciprocity.) When the judge asks her if she knew what the man planned to do when he borrowed her car, she answers “yes” (literal minded: he was going to buy groceries for his family. Another possibility is that she *now* knew that he had committed the crimes and was unable to perceive a time when she did not have that knowledge.) The judge remands her to a medium security prison for the maximum term as an accomplice. He cites her lack of concern and remorse and her knowledge before the fact of the crimes the man had intended to commit while using her car. Later the man who committed the crimes is set free after a technical mistrial. However the young woman with autism is still in jail today.

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In addition, parents, teachers, caregivers and staff need to help people with ASD learn about self-disclosure of a disability and protecting the right to remain silent

- ❑ Teach people with autism to NOT answer questions from law enforcement until their parent/guardian is present or until they have legal representation. (Television programs teach them to start answering questions immediately.) Teach exceptions to this rule.
- ❑ Consider using specialized teaching tools such as "Be Safe The Movie" to teach important skills like self-disclosure and protecting the right to remain silent. More information is available at www.BeSafeTheMovie.com .
- ❑ Meet with local law enforcement professionals and get to know them. Help them get to know the person with autism who lives within their jurisdiction.
- ❑ Use visual cues such as timelines and charts to help people with Autism Spectrum Disorder understand what they knew before and how it differs from what they know now and how to describe this to others.