

Managing and Treating Justice-Involved Individuals with Intellectual Disabilities in Pennsylvania

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Preface

This document describes what is known about evidence-based practices for the management and treatment of adults with intellectual disabilities in the criminal justice system. It was completed as part of the 2012 work of the Pennsylvania Mental Health and Justice Center of Excellence on behalf of the Center's sponsors: the Pennsylvania Commission on Crime and Delinquency, and the Pennsylvania Department of Public Welfare, Office of Mental Health and Substance Abuse Services. It is based on a review of the published evidence on this topic, and consultation with Pennsylvania-based experts who are experienced in this area.

The particular focus in this document is the identification of "best practices," as well as areas in which best practices have yet to be developed or implemented. We focus on different points of justice-system involvement to highlight specific issues within the continuum of justice processing for persons with intellectual disabilities.

**Managing and Treating Justice-Involved Individuals
with Intellectual Disabilities in Pennsylvania**

Defining Intellectual Disabilities (ID)

The Pennsylvania Department of Welfare defines an Intellectual Disability (ID) as a “permanent condition that affects a person’s ability to learn and function in daily life and that occurs during the developmental period” (www.dpw.state.pa.us/forchildren/intellectualdisabilitiesservice).

While there is not yet a single standard definition of ID, most definitions include the following three characteristics (aaidd.org; dsm5.org; thearc.org)

- IQ below 70 – 75 or low cognitive abilities as otherwise determined
- Poor adaptive functioning (e.g., self care, language, financial, work, and social skills)
- Originating before age 18 (some sources say before age 22)

The definition of ID used by the PA Department of Welfare, as described in the context of eligibility for ID services and supports, is less precise. While the condition regarding onset prior to age 22 is clear, the remaining criteria (general intelligence and ability of function in daily life) are defined only as “significantly below average,” opening the door for subjective judgment and, potentially, different conclusions. This definition may be found at <http://www.dpw.state.pa.us/forchildren/intellectualdisabilitiesservice>.

Although criminal law is not the focus of this document, we also note that the definition of ID in the legal context is equally imprecise in Pennsylvania. Effective Nov. 22, 2011, the PA legislature adopted a new definition of “intellectual disability” as a “significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, health and safety. The onset must occur before the individual's twenty-second birthday.” (50 Pa. Cons. Stat. § 4102 (2011)). We note this legal definition to highlight that definitions of ID vary by context and usually lack specificity. Moving forward we will focus on ID as it relates to service eligibility.

“Developmental Disability” is also often used to refer to individuals who were previously classified as mentally retarded (MR). According to the American Association of Intellectual and Developmental Disabilities, “Intellectual Disability is one type of a larger universe of many types of Developmental Disabilities. Developmental disabilities are defined as severe chronic

disabilities that can be cognitive or physical or both. The disabilities appear before the age of 22 and are likely to be life-long. Intellectual Disability encompasses the 'cognitive' part of this definition, that is, a disability that [is] broadly related to thought processes. Because intellectual and other developmental disabilities often co-occur, intellectual disability professionals often work with people who have both types of disabilities."

- Adults with ID are more likely than the general population to have symptoms consistent with autism and attention-deficit/hyperactivity disorders (Fazel, Xenitidis & Powell, 2008)
- ID is a risk factor for mental and behavioral health disorders (Holland & Jacobson, 2001; Glaser & Florio, 2004) although estimated prevalence rates for co-occurrence vary (Riches, Parmenter, Wiese & Stancliffe, 2006)

Examples of how the concepts of "Intellectual Disability" and "Developmental Disability" have replaced "Mentally Retarded" as culturally acceptable terms:

- American Association of Mental Retardation has become the American Association on Intellectual and Developmental Disabilities
- Association for Retarded Citizens of the United States (ARC) has become The Arc for People with Intellectual and Developmental Disabilities
- American Journal on Mental Retardation has become The American Journal on Intellectual and Developmental Disabilities
- The DSM-V proposes to change "Mental Retardation" to "Intellectual Development Disorder"

Offenders with Intellectual Disabilities in the Criminal Justice System

Estimates of the extent of ID among offenders in the criminal justice system (nationally and within the Commonwealth) vary widely, mainly because of the lack of a single, standard definition of ID, lack of consistency in methods for assessing ID, and the absence of a protocol to consistently screen individuals for this disability. This relative dearth of information represents a shortcoming of the penal system (Leone et al., 2008) and an opportunity for improvement.

There is some information from various sources to describe the parameters of the problem:

- The level of intellectual functioning within incarcerated populations is lower than that in the general population. The average level of measured IQ among incarcerated offenders is about 10 points below that of the general population (Diamond, Morris, & Barnes, 2012; Herrnstein & Murray, 1994).
- The prevalence of ID among prisoners is unknown, with estimates ranging from 1% - 30% of the inmate population; most estimates are in the 4% - 10% range (Denkowski & Denkowski, 1985; Fazel et al., 2008; Scheyett et al., 2009).
- Persons with ID are overrepresented in the prison population (Nobel & Conley, 1992 – cited in Glaser & Florio, 2004), considering that the prevalence of ID in the U.S. is less than 1% (Larson et al., 2001).
- Estimates of the prevalence of co-occurring mental health disorders among all persons with ID range from 20 – 39%. Estimates of these co-occurring disorders among prison inmates also vary widely and cannot be estimated accurately (Deb, Thomas, & Bright, 2001; Kerker et al., 2004; Riches et al., 2006).
- Methodological differences among studies as well as methodological weaknesses make it difficult to draw conclusions about the prevalence of ID in the offending/incarcerated population (Lindsay, 2002).
- Prevalence rates may differ depending on the stage of criminal justice processing (e.g., prevalence rates at arrest may differ from those at incarceration because of diversion programs)

Little is known about the prevalence of ID in the jail/prison population in Pennsylvania

- Data provided to the CoE from Allegheny County Human Services Department show that approximately 1% of the consumers registered with the County office of Intellectual Disabilities have spent one or more days in jail between 2006 and the present (B. Bulkoski, personal communication, October 18, 2012). The limitations of this estimate

should be recognized. Individuals with ID who are registered with the County have been diagnosed as ID and are supported by services provided by the agency. As such, they may not be representative of the full range of individuals with ID. Many individuals with ID are not legally or diagnostically defined as such (Jones, 2007), so we do not have a complete picture of the prevalence of offending among individuals with ID. More broadly, the question “which people with intellectual disabilities offend?” is a different question than “which offenders have ID?” the information provided does not address the latter.

- Data regarding 61,491 unique individuals who were released from Pennsylvania Department of Corrections facilities between 2006 and 2011 shows that 5% of this group had an IQ score of 70 or below. This information is based on the initial BETA iii screening conducted by the DOC during the evaluation period at SCI Camp Hill. According to DOC policy, individuals who score 70 or below on this initial screen should have a more thorough assessment to determine the presence of ID. Given this, the prevalence rate of 5% may be slightly higher than an estimate based on data that included the results of the more thorough assessments.

Individuals with ID often go unidentified and unnoticed by CJS staff at all levels.

- Screening procedures for ID, including offender self-report, are not routine in the CJS (Linhorst et al., 2002; Scheyett et al., 2009, also personal communication from B. Bucklen, September 12, 2012).
- Persons with ID in the criminal justice system are likely to actively conceal their disability to fit in and avoid appearing vulnerable or becoming victimized (Dagher-Margosian, 2005; Reynolds, 1995; Scheyett et al., 2009)

Even if an individual is known to have an ID, many facets of the criminal justice system in Pennsylvania make no distinction among ID and MH populations. Also, community mental health providers often exclude offenders with ID from services.

- Offenders with ID are often grouped into programs designed for mental health consumers (e.g., specialized housing units, mental health courts, probation officers) (B. Bucklen, M. Hepner, A. McHale, S. Landes, personal communications, various dates September and October, 2012). In contrast, community-based programs often actively seek to exclude individuals with ID from programs (Glaser & Floria, 2004; also personal communication with T. Salvatore, October 11, 2012).

Across studies of ID offenders, there is general consensus regarding several points.

- General risk factors for offending within the ID population are not different than those for the offenders as a whole (Glaser & Florio, 2004; Phillips et al., 2005; Jones, 2007). Risk factors such as psychosocial disadvantage, family history of offending, antisocial peers, and neighborhood disadvantage are predictive of offending (Farrington, 2000, Loeber et al, 1998; Gendreau, Little, & Goggin, 1996). Clinical factors showed less association with offending than criminological risk for individuals with mental disorders (Bonta, Law, & Hanson, 1998) and ID (Fitzgerald, Gray, Taylor & Snowden, 2011).
- Women make up a small percentage of offenders with ID; however, female offenders with ID generally have higher levels of mental health problems, higher levels of sexual abuse, and lower levels of re-offending than their male counterparts (Lindsay et al., 2004).
- Studies from the UK indicate that individuals with ID are not at higher risk for particular types of offenses (e.g., sex offenses, arson) as compared to the general population. Early studies indicating otherwise are now refuted because of methodological problems (Day, 1993; Walker & McCabe, 1973 cited in Jones, 2007; Lindsay et al., 2004). It is unclear whether this also holds for US populations, but this finding should caution against presumptions of this sort.
- ID offenders are overrepresented in prison. The low end of typical estimates of ID among inmates is 4% (Scheyett et al., 2009) while persons with intellectual disabilities make up less than 1% of the non-institutionalized U.S. population (Larson et al., 2001).
- It is unknown whether persons with ID actually commit more offenses than the general population
 - It is probable that offenders with ID are more likely to get caught than offenders without ID (Lindsay, 2002).
 - Individuals with ID are more likely to be convicted and receive harsher punishments because they may not act as effective self-advocates during interrogations with police or plea negotiations (Scheyette et al., 2009).
- ID offenders are vulnerable to victimization in prison and have difficulty adjusting to the rules and structures of incarceration (Salvatore, 2007; Petersilia, 1997).

Opportunities for Action:

Opportunity #1: *There is a need for the Commonwealth of PA to adopt a precise definition of ID and to support the adoption of this agreed-upon definition across service sectors.*

Opportunity #2: *There is a need for a state-wide prevalence study of ID among individuals at various points along the CJ continuum. This study should be sensitive enough to differentiate within the population of offenders with ID (individuals who fall into the mild/borderline ID range may present very different issues than those who are within the moderate range) and broad enough to detect differences across sites and at different points in the CJ continuum. A prevalence study of this sort would inform practitioners and policy makers regarding the management and treatment of this population at different points in criminal justice involvement.*

Opportunity # 3: *PCCD, in conjunction with DPW and other appropriate agencies, could conduct a systematic “request for information” from county jails/prison and probation/parole offices throughout the Commonwealth of Pennsylvania to develop an understanding of current practices and policies for management of justice-involved individuals with ID.*

Screening

The issues noted in the previous section point to the issue of screening. In general, the purpose of screening is to identify individuals who may have an ID with the goal of enhancing clients' opportunities to receive appropriate interventions. In the current context, instituting screening procedures to identify the presence of an ID is useful to the extent that it provides information that can be used to determine the most appropriate option for managing the client in the CJ system.

The available options for effective screening may vary depending upon the stage of CJ processing being considered. The specific issues associated with each stage of the Sequential Intercept Model are described in more detail below. In this first section, we address general issues related to screening.

There are certain points in the CJ processing continuum where a formalized screening is not possible or practical. The most obvious is at the point of initial police contact during the immediate incident. At this point, behavioral cues may be the only indication for the presence of an ID. The Arc for People with Intellectual and Developmental Disabilities (as cited in Salvatore, 2007) provides some general behavioral cues which are often associated with ID:

- *Noticeable communication problems* manifested in limited vocabulary, communication that is not age-appropriate, difficulty understanding or answering questions, difficulty recalling details of the recent event, and inability to read.
- *Behavior that is not age appropriate* demonstrated by difficulty telling time, making change, or using the telephone; lack of awareness of basic behavioral cues; mimic responses or answer given by others; and inappropriate interactions with peers or the opposite sex.
- *Lack of understanding regarding the situation* manifested by the inability to grasp the seriousness of the immediate situation, smiling inappropriately or inability to be still (even when asked to do so), little thought given to actions or statements, lack of consideration for the acceptability or legality of actions or behaviors, little recognition of his/her individual rights.

While not always accurate, observing these behavioral cues should signal that a formalized screening at initial detention/initial court hearings (intercept 2) is needed. Proper screening protocols ensure that persons who have ID are identified and provided with protections during police questioning and subsequent legal proceedings. Identifying persons with ID early in the CJ process also provides opportunities to divert appropriate persons to community treatment options instead of jail.

More formalized assessments of ID for individuals in the criminal justice system pose some challenges

- Generally speaking, formal diagnosis of ID consists of 3 parts
 - Intelligence test (e.g., WAIS, Stanford-Binet)
 - Adaptive behavior test
 - Developmental history interview and/or documentation of prior diagnosis of ID before the age of 18 (or 22). Documentation review may be the only option for establishing developmental onset for persons with more severe impairments.
- These assessments are usually completed by a trained psychologist (McKenzie et al., 2012) or other specially trained professional.
- In the context of the CJ system, formalized assessment procedures are beyond the capacity of criminal justice agencies and institutions (McKenzie et al., 2012), given the time constraints that are typically present. Partnerships with mental health providers may be required.
- Assessing deficits in adaptive functioning among incarcerated individuals is complicated by the fact that existing measures of adaptive functioning have not been designed or normed for use with a correctional population (Brodsky and Galloway, 2003; Tasse, 2009).
- Everington and Keyes (1999) concluded that standardized measures of adaptive functioning should not be used with individuals who have been incarcerated for lengthy periods of time because they have had no opportunity to perform in most of the skill domains measured by these instruments

Without sufficient concern and the intention to manage the client differently (depending on the outcome of the assessment), it may be impractical to formally assess arrestees prior to interrogation.

Short screening instruments can still help. There are several validated screening tools that can be administered by non-clinical staff. These may provide the CJ system with enough information to make appropriate judgments regarding client management and lessen the reliance on mental health providers (reserving formalized testing for a small number of particularly complicated cases or those involving very serious charges).

- Validated short screening instruments for ID for use in criminal justice settings include:

- Learning Disability Screen Questionnaire (McKenzie et al., 2012) (the test was developed in the UK where “learning disability” means the same thing as “Intellectual Disability” does in the US).
- Hayes Ability Screening Index (Hayes, 2002) examines a set of domains
 - Designed to be used by non-clinical staff
 - The screeners take only a short time to administer (less than 10 minutes)
 - Measure both cognitive functioning and adaptive skills
 - These instruments were validated in criminal justice settings
 - Indicate whether
 - an individual should be referred for further psychological testing
 - if precautionary procedures or protections should be applied during interrogation

Currently in Pennsylvania, some counties have created their own procedures for screening for ID.

- In Philadelphia, defendants are asked to read out loud during some interviews with investigators to test literacy and English comprehension (Institute on Disabilities at Temple University, 2010).
- Training for criminal justice professionals on dealing with mentally ill and intellectually disabled individuals is offered by Montgomery County at their Crisis Intervention Specialist Police School (www.mces.org)

A call to the Pennsylvania Department of Welfare, Intellectual Disabilities Services customer service line (November 6, 2012) revealed that the office does not recommend a particular screening tool, but would recommend that the tool chosen be an individual test (not group administered) and that it be normed on the general population, not a disability population. In terms of testing, norms can be described as the average scores among an identified group of people. These norms provide a basis for comparison of the test scores of individuals. In this case, the Office recommends that the individual’s scores be compared to the general population, not simply to other individuals with ID.

The Office of Development Programs is more precise in their recommendations regarding needs assessment. The Pennsylvania Department of Public Welfare, Office of Developmental Programs and stakeholders across the state advocate the use of the Support Intensity Scale (SIS) to be the standardized needs assessment tool throughout the Commonwealth. The SIS focuses on the “supports needed for the individual to live an everyday life. It compliments the

individual support plan planning process as it addresses what is important to and for the individual. Topics include home and community living, lifelong learning, employment, health and safety activities, social activities, protection and advocacy, as well as medical and behavioral supports.”

More information about the SIS as well as the test manual and forms can be found at:
<http://www.dpw.state.pa.us/foradults/intellectualdisabilitiesservices/supportintensityscaleandpaplusis/index.htm>

Opportunities for Action:

Opportunity #4: *A menu of short, validated screening tools could be constructed to provide options for use in the CJ and MH systems. Restricting counties to the use of a tool from the menu would promote consistency and permit cross-county comparisons.*

Opportunity #5: *A training program could be developed for police officers to improve their capacity to recognize individuals with ID, enhance their ability to communicate with these individuals, and increase their awareness of available service options. Inclusion of “hands-on scenario-based sessions involving an interdisciplinary approach” is recommended (Henshaw & Thomas, 2012).*

Opportunity #6: *There are many justice-involved individuals with ID who are not referred for a psychological evaluation (Bonnie, 1992 cited in Weiner & Hess, 2006). Rates of referral for evaluation could be monitored to ensure that screening procedures are applied consistently over time.*

Opportunity # 7: *The criminal justice processing continuum could be examined to identify points at which screening could be completed. This information could be included in a manual containing an outline of systematic screening practices and procedures to be used state-wide.*

Opportunity #8: *A date be set by which all agencies will begin to use the practices and procedures regarding systematic screening identified in the manual noted above (including the exclusive use of “accepted” screening tools).*

Challenges And Opportunities Along The Sequential Intercept Model

The following sections of this document are structured according to the Sequential Intercept Model. In each section, we will provide challenges for the ID population related to each stage and, where possible, recommend actions that may be taken to address these challenges. In some cases, we have joined intercepts because the issues and challenges overlap.

Throughout these next sections, we note work done in other countries, particularly Australia and England. These countries appear to be further along in their consideration of the special needs of offenders with ID. Glaser and Florio (2004) suggest desirable features of a “best practice” model for services for offenders with ID, and these recommendations have influenced our formulation of “opportunities for action.” These features include:

- continuity of services (preferably from the first contact with the CJ system through reentry);
- interagency and interdepartment sharing of the responsibility for care and management (requiring case managers who span the boundaries of agencies/departments);
- flexible funding;
- provision of comprehensive (multi-model and skills-oriented) individual programs including a focus on criminogenic needs as well as cognitive-behavioral needs;
- education and training about the special issues involved with this population (for CJ personnel and community supports);
- particular emphasis on “person-centered” planning.

Intercept 1: Law Enforcement; and Intercept 2: Initial detention/Initial Court Hearing

Issues and challenges

“The vulnerabilities of individuals with ID are most apparent at the time of arrest and subsequent questioning” (Baroff, 2005). The challenges for individuals with ID at these earlier stages of CJ processing revolve around the impact of cognitive deficits on key decision points during arrest and interrogation by police (e.g., self-incrimination, waiver of right to an attorney). These decisions have serious implications for subsequent penetration into the CJ system. It is at the earliest stages of justice involvement that enhanced procedures could have the largest effect on improving the management and treatment of persons with ID who are involved in the CJ system.

As already noted, identifying individuals with ID is a particular challenge for police officers during the initial contact (especially if the offender is unfamiliar to the officer). Some report relying on physical or behavioral cues to identify these individuals, but this method fails to identify many individuals with ID (Henshaw & Thomas, 2012). Complicating the issue, some individuals with ID may try to mask their disability by pretending to understand more than they do (“the cloak of competence,” Edgerton, 1993). A general rule here is that officers tend to under-identify, rather than over-identify, individuals with ID.

During initial detention and court hearings, characteristics sometimes present in individuals with ID may increase the chances of conviction (Everington & Fulero, 1999; National Research Council, 2001; Salvatore, 2007; Scheyette et al., 2009). These characteristics may manifest themselves as the person being:

- eager to please/agree with interrogating officers
- more suggestible
- unlikely to comprehend the Miranda warning
- less able to understand legal terms
- less able to communicate effectively and showing poor reasoning skills
- more likely to waive their rights
- unable to fully appreciate the seriousness of the immediate situation
- less able to understand the enduring consequences of their statements to police
- more likely to offer false confessions (Kassin, 2009)

- inaccurate in their recollection of events during police interviews (Stacey, 2000 cited in Henshaw & Thomas, 2012).

It should be noted that, like individuals without ID, individuals with ID are a heterogeneous and complex group. The characteristics noted above are not necessarily all present for a particular individual having ID. Many factors, including the level of intellectual functioning, will contribute to the presence/absence of these characteristics.

Options for managing offenders with ID in these early stages of the CJ processing include

- Providing an advocate during police interrogation (Everington & Fulero, 1999)
- Referral to specialized courts, such as Montgomery County's behavioral health court, for treatment and correctional strategies designed to meet the needs of offenders with disabilities (A. McHale & S. Landes, personal communication, October 11, 2012).

Additional challenges also present themselves

- Lack of community treatment options can lead judges to hold individuals with ID in criminal justice custody even when they believe that a treatment or supervised housing placement would be more appropriate for the individual (M. Hepner, personal communication, October 1, 2012; Institute on Disabilities at Temple University, 2010).
- Many Pennsylvania jurisdictions struggle to find appropriate housing or treatment for offenders with ID (M. Hepner; A. Mc Hale; S. Landes; T. Salvatore; personal communications, various dates October, 2012)

Opportunities for Action:

Opportunity #9: *Arrested persons who show signs of potential ID (e.g., communication problems, age inappropriate behavior, lack of understanding) could be screened more effectively, and provided appropriate protections (e.g. an advocate) during interrogations because their disability causes behaviors that increase chances of conviction (Everington & Fulero, 1999; Salvatore, 2007; Scheyette et al., 2009).*

Also, as noted in Opportunity #5, a training program could be developed for police officers to promote the use of techniques for recognizing individuals with ID and to enhance their ability to communicate with these individuals.

Opportunity #10: *Given the increased possibility that a person with ID does not fully comprehend his/her rights during this stage of CJ processing (i.e., interaction with police and lawyers during initial interviews), an assessment of the individual's understanding could be standard practice in situations when the individual is known or suspected to have an ID. Instruments such as Grisso's (1998) Instrument for Assessing Understanding and Appreciation of Miranda Rights could be adapted to assist practitioners in these evaluations.*

Opportunity # 11: *Housing options for offenders with ID could be explored through a partnerships between criminal justice agencies and agencies such as the Department of Public Welfare, Office of Intellectual Disabilities. Appropriate community housing for offenders with ID would combine supports for the person's disability as well as criminal justice supervision during an individual's community sentence.*

Intercept 3: Jails/Courts

Issues and challenges

Two key issues in US jurisprudence – competency and culpability - are particularly relevant when considering offenders with ID. These issues are complex and there is an extensive body of literature devoted to these topics (see, for example, Bonnie, 1992; Cloud et al., 2002; Pinals, 2005) which is well beyond the present scope of this document. In this document, we briefly define these two legal determinations and then highlight some challenges that are specific to individuals with ID. We then describe some of the issues related to adjustment during periods of incarceration for individuals with ID.

Competency and Culpability

A competent defendant is one who

- understands the charges against him/her and their seriousness in terms of possible punishment,
- understands the purpose and nature of a trial and the role of its principal actors, and
- is able to assist the attorney in his/her own defense (Dusky v. United States, 362 U.S. 402 (1960)).

Culpability is the degree of personal “blameworthiness” a person possesses.

Competency to Stand Trial

Persons declared incompetent must be restored before they can enter a plea or stand trial (Miller 2003, Mossman, et.al, 2007). Court cases involving an incompetent defendant, like all other court cases, are much more likely to be resolved by plea bargain than by a trial.

The rate at which individuals with ID are adjudicated incompetent vary widely, differing by state and degree of ID (e.g., 17% in Missouri to 33% in Michigan; 23% of mild ID and 68% of those with moderate ID found incompetent in Virginia (Petrella, 1992 cited in Weiner & Hess, 2006)

Assessing competency for persons with ID

- Everington (1990) has developed an instrument designed to assess competence of persons with ID called the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)

- CAST-MR gauges
 - Vocabulary and conceptual knowledge related to criminal justice proceedings, such as the roles of the judge, prosecutor, or defense attorney
 - Ability to assist in own defense, e.g., understanding of the attorney-client relationship
 - Relation of factual events, e.g., ability to effectively communicate a narrative description of the events surrounding the person's arrest
- Research on the CAST-MR indicates that this instrument shows good reliability and validity (Everington & Dunn, 1995).

Restoration of competency for persons with ID is a challenge (M. Hepner, personal communication, October 1, 2012; Pinals, 2005).

- Those adjudicated incompetent to stand trial because of mental illness are often restored to competency in forensic hospitals with the assistance of psychiatric therapies and medications.
- Psychiatric treatment is often not effective for restoring competence for persons whose disability stems primarily from intellectual deficits and not mental illness.
- Persons with ID may have never been "competent." Restoration programs may impart competence to persons with ID for the first time as opposed to restoring it (Pinals, 2005).
- Attainment of competence in the case of individuals deemed incompetent on the basis of ID is highly unlikely (Bonnie, 1992), but may be related to the degree of ID (Petrella, 1992 cited in Weiner & Hess, 2006).

Competency attainment programs for individuals with ID

- Programs designed to support competence for persons with ID during trial are referred to as competency attainment, training or education programs (e.g., Anderson & Hewitt, 2002; Bertsch, Younglove, & Kerr, 2002)
- The Slater Method is one well-studied, structured training program for defendants declared incompetent due to ID (Wall, Krupp & Guilmette, 2003)
 - Can be delivered in inpatient or outpatient settings
 - The program consists of five instructional modules: purpose of training and review of charges, pleas, and potential consequences; courtroom personnel; courtroom proceedings, trial and plea bargaining; communicating with the attorney, giving testimony, and assisting in the defense; and tolerating the stress of proceedings.

- One study found the Slater Method more successful than traditional treatment in restoring competence in persons with ID (Wall & Christopher, 2012)
- Two ethical concerns about competency training for offenders ID should be taken into account. First, participation in such programs could potentially result in additional detention time for persons with ID. Second, the programs may create a false appearance of competence. That is, persons who experience competency training programs may acquire the minimal skills associated with trial competence, but remain unable to grasp the full purpose and consequences of a trial or a plea bargain (Wall & Christopher, 2012).

Culpability

The potential impact of ID on culpability is recognized by professionals and the courts:

- The American Association on Mental Retardation (AAMR, 2001) states that people with ID are often impulsive “which may result in acts that people of average abilities could refrain from.” This could manifest itself through problems related to hyperactivity and/or through a reduced capacity to consider consequences (Baroff, 2005), either of which may result in a criminal act with less culpability than an offender without an ID. Individuals with mild ID may be capable of forming intent but they may have difficulty with planning and executing the act (Salvatore, 2007).
- In deciding the landmark Atkins v. Virginia (2002) case, which held the death penalty for mentally retarded offenders to be unconstitutional, the United States Supreme Court wrote, “Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.” (Atkins v Virginia, 2002, p. 319).

Issues for Offenders with ID in Custody

Offenders with ID often do poorly in prison, similar to offenders with mental illness (Dagher-Margosian, 2005; Petersilia, 1997; Salvatore, 2007; Weiner & Hess, 2006). While incarcerated they are more likely to

- receive penalties for misconduct
- decline to engage in rehabilitative programming (they may fear exposing their disability)
- become victims of abuse
- acquire violent and other antisocial behaviors by watching other inmates
- “max out” their sentences

Some of these outcomes may be due to limitations related to ID, such as a reduced ability to perceive social cues to danger, a misguided trust in others, compliance in situations where it is not warranted, and being perceived by others as easy targets (National Research Council, 2001). These outcomes may also be related to an inability to comprehend rules and expectations (Denkowski & Denkowski, 1985).

Despite these clear disadvantages for individuals with ID, there are currently no specialized housing units or treatment programs specifically for persons with ID in the Pennsylvania Department of Corrections. Instead, individuals with ID are housed on “special needs units” along with individuals with mental illness (B. Bucklen, personal communication, September 12, 2012).

Other states have made and/or plan to make special accommodations for incarcerated individuals with ID.

- A presentation by Goldman (2010) presents potential accommodations during confinement identified by a Washington State task force composed of representatives from the Washington Association of Sheriffs and Police Chiefs as well as individuals from the Washington State Developmental Disabilities Council. These recommendations indicate that
 - Individuals with ID should be provided with special housing (as are those with medical or mental health needs) which is consistent his/her health, safety, and security needs and which ensures assistance with written or verbal communication.

- Jails/prisons should reach out to other service providers to seek information about the individual's "behaviors, triggers and other information that will assist in providing accommodations."
- The Texas "Mentally Retarded Offender Program" provides housing units for ID offenders with living and working conditions specialized to their needs (Pugh & Kunkel, 1986; still in operation today, see: [http://www.tdcj.state.tx.us/documents/finance/Agency Strategic Plan FY2013-17.pdf](http://www.tdcj.state.tx.us/documents/finance/Agency%20Strategic%20Plan%20FY2013-17.pdf), page 24). Features of the program include
 - protection from other inmates
 - physical and mental health care
 - special education
 - vocational training

General programming during incarceration is not always suited to individuals with ID

- Cognitive-behavioral interventions which have been shown to be effective for the general population are less effective for persons with ID (Sturmey, 2005)
- Direct interventions with the individual which focus on cognitive attributions and misconceptions common among individuals with ID may be an effective alternative with these individuals (Jones, 2007)
- Individuals with ID respond much better to behavioral interventions (Sturmey, 2005) which teach specific skills by reinforcing appropriate behaviors and discouraging maladaptive behaviors (Harris, 2006).

Opportunities for Action:

Opportunity # 12: *The management of individuals with ID could follow the same basic tenets as correctional programming for non-ID offenders (i.e., needs and risk assessments followed by programming tailored to address the individual's criminogenic needs). However, efforts should be made to understand additional issues that may not surface during the usual risk/need assessment (e.g., triggers, physical limitations).*

Opportunity # 13: *During legal proceedings, a defendant with an ID could work with an advocate who has specialized, disability-related expertise in addition to the defense attorney.*

Opportunity #14: *Individuals with ID could have the opportunity to review unit rules, regulations, and expectations with a knowledgeable individual to improve his/her understanding. Individuals with an intellectual disability that is so severe as to prohibit understanding of prison/jail rules and expectations may be inappropriate for these environments and alternative placement should be considered.*

Opportunity #15: *A program modeled after Forensic Peer Support could be developed to link inmates with ID to a case manager who can work with them throughout the incarceration period on issues of services (addressing the issue of continuity of care) and interagency information exchange (i.e., informing prison staff of the individual's unique needs and issues)*

Opportunity #16: *The Department of Welfare, Office of Intellectual Disabilities could work with the Department of Corrections to review and update current policies and practices (both practical and financial) to accommodate the special needs of this population.*

Intercept 4: Reentry and Intercept 5: Community Corrections

Issues and challenges

The reentry period (the period immediately following release from jail/prison) is a period of particularly high vulnerability for re-offending and a period which also presents opportunities to build support systems that can reduce recidivism (Travis, 2005). This is true for individuals with or without ID.

Participants in the Serious and Violent Offender Reentry Initiative (SVORI) identified basic necessities such as food, clothing, housing, identification, and financial assistance as important needs upon release (Visher & Lattimore, 2007). Similar areas are important for individuals with ID, so support in these areas is important. While the broad areas of need may be similar, the presence of an ID may add a unique “twist” to the accomplishment of these tasks and can increase the importance of addressing these issues:

- Appropriate housing is the foundation of reentry planning for ID offenders, yet appropriate housing can be very difficult to secure for this population (see below)
- Connection to and coordination of support services may be particularly important for this group (Jones, 2007)
 - Liaisons with the client’s support system may enhance his/her environment and facilitate rehabilitation (Jones, 2007)
- Assistance in completing paperwork is often needed to receive SSI/SSDI benefits, and can be obtained through programs such as SAMSHA’s SOAR program (SSI/SSDI Outreach, Access and Recovery)
 - Proper identification (e.g. a driver’s license or state-ID) is required to obtain these benefits
- A needs assessment which includes areas not typically assessed at reentry (e.g. protection and advocacy activities, medical supports needed, basic home living activities) may be warranted (see previous information regarding the SIS, recommended for use in PA).
- Justice-involved individuals with ID often have an enhanced need for services, and may present challenges to the service delivery system

Offenders with ID can be difficult to place in community-based services (M. Hepner, A. Mc Hale, S. Landes, T. Salvatore, personal communications, various dates October, 2012) and may also not fully benefit from treatment programs developed for other populations.

- Traditional therapeutic modalities and CJ interventions may not be appropriate or effective for individuals with ID (Jones, 2007) without tailoring these services to the special needs within this group (e.g., cognitive-based therapies may present challenges for individuals with cognitive deficits).
- Service systems for persons with developmental disabilities are not always receptive to serving ID adults involved in the CJS (Salvatore, personal communication; see also Hayes, 2004; Holland, 2002; Jones, 2007).
- ID or MR units tend to be focused on young people and providing assistance to victims of crime or abuse. Serving persons with criminal histories is outside the culture and mission of many ID or MR agencies.
- In some cases people who are not formally diagnosed as having an intellectual or developmental disability during childhood are not eligible for ID or MR services. This can cause problems for CJS staff who encounter adults who appear to have ID yet have no previous diagnosis.

Community Corrections

In general, community correction programs are resource-challenged, both in terms of personnel and finances. As a result, individuals with ID may be overlooked. There are often simply not enough resources to devote to the differential management of this group.

In addition, the presence of individuals with ID is often not recognized since little screening is done in community corrections (Weiner & Hess, 2006), and the personal characteristics noted earlier (e.g., desire to appear “normal”) often mask the disorder in these services. Earlier we noted that individuals with ID often max-out of their sentence and, therefore, do not have the monitoring or support that probation/parole provides (Petersilia, 1997; Santamour, 1989). This situation may add to the vulnerability of this population.

There is limited information regarding the rates of recidivism for individuals with ID. However, Linhorst, McCutchen, and Bennett (2003) report evidence that individuals with ID are less likely to recidivate than those with other developmental disabilities. Further research is needed (e.g., studies using more stringent controls) in order to confirm this conclusion.

There is some evidence that individuals with ID are best served through partnerships between probation/parole and behavioral health agencies (e.g., case management).

- One study of an intensive case-management approach to returning ID offenders in Texas, reported that the program was successful in reducing recidivism below typical rates. Project CHANCE case managers supported ID offenders in the community and coordinated the transfer of services to the local MH/MR agency.
- Similar models have used reentry probation officers to not only provide intensive monitoring but to also assist in overcoming barriers to housing, employment and other issues (Butler County, PA).

The PA DOC refers individuals with ID to their “Forensic Community Reentry and Rehabilitation Program” approximately 12 months prior to release. This program features a community placement specialist who assists the client with community-based services such as housing, employment training, childcare and mental health services). Montgomery, Lancaster, and Philadelphia Counties all have community support programs for individuals with ID that involve partnerships between probation/parole and behavioral health agencies.

At one time, the Lancaster County Mentally Retarded Offender Program was the only program in the United States which combined the services of probation/parole and MH/MR (White & Wood, 1986). This program model was adopted across the country as a model for working with offenders with ID, with other states adopting various aspects of this model. For example (cited in Linhorst et al 2003),

- Pima County, AZ, has probation officers trained in special education and corrections who work with small caseloads
- The Massachusetts Parole Board created the MassCAPP Project, a residential program for individuals with ID
- The Developmental Disability Offenders Program, sponsored by the Association for Retarded Citizens of New Jersey, provides case management services to offenders with ID in the community

Opportunities for Action:

Opportunity #17: *Reentry represents an important transitional period during which accommodation to the needs of individuals with ID may be particularly important. It would be beneficial to use validated, structured needs assessments specific to the ID population (e.g. the Support Intensity Scale that is currently recommended by the DPW Office of Developmental Programs) during reentry planning and assessment for individuals with ID. This additional assessment could be used in conjunction with the agency’s current reentry tools. A menu of a validated, structured needs assessment tools geared toward*

the ID population can be developed so that specific agencies are able to maintain some independence while preserving the opportunities for cross-county and cross-systems comparison.

Opportunity #18: *Given the particular challenges associated with reentry for individuals with ID, planning for reentry could begin early in incarceration and continue throughout the course of the incarceration period.*

Opportunity # 19: *A comprehensive reentry program could be adopted and instituted in PA DOC facilities and local jails. Butler County, PA has developed a comprehensive program which may serve as a model for the state (pending evaluation results). In the Butler County program, participants progress through four stages of reentry preparation during their time in incarceration, accruing responsibilities and privileges as they move from one stage to the next. Participants who successfully complete the program will have obtained a driver's license or state-ID, community service experience, connections to external treatment programs, an AA sponsor, safe and suitable housing, a bank account, and employment or materials with which to obtain employment (i.e., resume, cover letter and social security card) before they are released.*

Opportunity # 20: *In a manner similar to pairing an attorney with an ID advocate during court proceedings, a specialized case manager and a probation/parole officer team may best serve the needs of re-entering offenders with ID (Salvatore, 2007)*

Opportunity #21: *Consistent with the recommendations of the Washington Task Force (Goldman, 2010), offense-specific training and ongoing support could be provided to caregivers of individuals with ID in the community. This education can help close the information gap that may develop when individuals are removed from the community.*

Summary

This review of the literature and practices in Pennsylvania leads to several conclusions

- Pennsylvania does not have a precise and consistent definition of “intellectual disability,” ensuring variability in criteria for inclusion in services
- There is little consistent information about the prevalence of individuals with ID within and across service sectors (particularly criminal justice and mental health) or in the types of services provided in these service sectors
- Screening for ID is not conducted systematically or in a standard fashion (i.e. there is a lack of consistency for when and how to screen individuals)
- The consequences of not identifying individuals with ID are potentially significant for these individuals, possibly producing negative outcomes for them from the point of arrest forward in the criminal justice system
- The opportunities for positive action to improve practices for managing this group are great

With these conclusions in mind, the PA Mental Health and Justice Center of Excellence would suggest the following actions as a starting point for improving conditions for justice-involved individuals with ID. These ideas are taken from the full list of “opportunities for action” included on the previous pages (the specific opportunity is included after each point). It is assumed that PCCD and OMHSAS would involve other agencies (e.g. Department of Corrections) in these actions as warranted.

1. PCCD and OMHSAS could initiate a systematic “request for information” from county jails/prisons, the DOC, and probation/parole offices throughout the Commonwealth of PA to develop an understanding of 1) current practices for identifying and managing justice-involved individuals with intellectual disabilities. Included in this request would be a solicitation of information regarding current practices in areas such as the use of an advocate during police interrogations and/or specialty courts as well as feedback regarding the a feasibility of such practices in the jurisdiction. This request for information can pave the way for the implementation of systematic screening practices using identified screening tools (Opportunity #3) and other innovative actions.

2. PCCD and OMHSAS could collaborate with the PA Department of Welfare, Office of Developmental Programs, regarding the services for ID population in general. More specifically, this collaboration could work to produce acceptance of a consensual definition of ID to be used for identification and service planning in the criminal justice system across the Commonwealth. (Opportunity #1) Such a collaboration could also significantly aid in reentry planning for offenders with ID, which is traditionally very difficult.
3. A menu of short, validated screening tools for use in the CJ and MH systems could be developed with guidelines to encourage counties to use tools from the menu (to promote consistency and permit later cross-county and cross-systems comparisons). (Opportunity # 4)
4. The criminal justice system processing continuum could be examined to identify points when screening could be completed. This information could be included in a manual containing an outline of systematic screening practices and procedures to be used state-wide. (Opportunity #7)
5. A date could be set by which the new practices and procedures would be widely implemented (Opportunity #8)

These first 5 points of action would all lay the groundwork for a prevalence study that could be conducted following the implementation of the new screening tools and procedures (after the date noted at #5). The information from the prevalence study could then be used to evaluate the need, feasibility, and cost for additional system-level changes.

The next two points represent opportunities for positive change that can be implemented more immediately with minimal effort or cost.

6. We recommend the use of validated, structured needs assessments specific to the ID population (e.g. the Support Intensity Scale that is currently recommended by the DPW Office of Developmental Programs) for use during reentry planning and assessment for individuals with ID. This additional assessment could be used in conjunction with the agency's current reentry tools. A menu of a validated, structured needs assessment tools geared toward the ID population can be developed so that specific agencies are able to maintain some independence while preserving the opportunities for cross-county and cross-systems comparison. (Opportunity #17)
7. We also recommend the implementation of screening for arrested persons who show signs of potential ID (e.g., communication problems, age inappropriate behavior, lack of

understanding) and that they be provided enhanced operational safeguards or appropriate protections during interrogations. (Opportunity #9)

We believe the above opportunities for action would place the Commonwealth of Pennsylvania in the position to be a national leader for both understanding and addressing the the unique needs of justice-involved individuals with ID. Taking advantage of these opportunities for action would also be the first step toward implementing systematic safeguards for the protection of this vulnerable group.

Resources on Intellectual Disabilities

[American Association of Intellectual and Developmental Disabilities](#)

[The Arc of New Jersey's Criminal Justice Advocacy Program](#)

[Association of University Centers on Disabilities](#)

[National Association of Councils on Developmental Disabilities](#)

[Pennsylvania Developmental Disabilities Council](#)

[Persons with Intellectual in the Criminal Justice System \(2007\). *MCES Quest, Volume 7*](#)

[Temple University Institute on Disabilities](#)

[Equal Justice for People with Developmental Disabilities](#)

The Office of Justice Programs (US Department of Justice) offers a video training program including techniques for interviewing victims with communication and/or cognitive disabilities. Many of the points made regarding victims are also applicable to offenders (e.g. "cognitive impairment is unrelated to the reliability of memory", "cognitive impairment is unrelated to the ability to distinguish the truth from a lie") (Victims with Disabilities: The Forensic Interview, NCJ 234678, 2011 <http://www.ovc.gov/publications/infores/pdftxt/VictimsGuideBook.pdf>).

Recognizing and responding to people with intellectual disabilities:

<https://www.ncjrs.gov/pdffiles1/Digitization/204210NCJRS.pdf>

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