

SEXUALITY, DISABILITY & THE LAW

Myths and Facts Regarding Sexuality and Individuals with Developmental Disabilities


Respond True or False

- Individuals with Intellectual Disabilities are not able to plan offences.
- Individuals who are severely or profoundly delayed are safe from sexual abuse because they live in highly supervised settings and are never left out of the sight of staff or family members.
- Sex education must be given to a child at a certain age to be beneficial.
- Most persons who are developmentally delayed do not have a sexual drive.
- Individuals with Intellectual Disabilities are never credible witnesses.
- Teaching Relapse Prevention Therapy to individuals with developmental disabilities who have sexually offended, is more difficult than with the non-disabled population.
- Individuals with Intellectual disabilities can not give consent for sexual activity.

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Introduction

- Behaviour Management Services of York and Simcoe (BMS-YS) – Who are We?
- Intellectual Disability
- Sexuality
- QAM
- Intellectual Disability and the Law
- Challenges to the system
- Going Forward

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Behaviour Management Services of York and Simcoe (BMSYS)

- ❑ Behaviour Management Services of York and Simcoe was established in 1977
- ❑ Department of Mackenzie Health, Mental Health Program
- ❑ Provides service to all residence who meet mandate in York and Simcoe region



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BMSYS

Mandate:

Who do we serve?

- Adult, Adolescents, Children
- Intellectually Disability; IQ 70 and under
- Cognitive Delay of 2 or more years


Community Based Program Voluntary



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BMSYS Sexuality Clinic


- ❑ Sexuality Clinic was developed in 1982
- ❑ First community based service for Intellectually Disabled sex offenders
- ❑ Offers comprehensive services to adults, adolescents and children with intellectual disabilities who are engaging in sexual concerning or offending behaviours.



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BMSYS Sexuality Clinic

- Our role is the management and reduction of inappropriate sexual behaviours and promotion of appropriate and healthy alternatives
- Followed the path of main stream sex offender treatment models
- Offers individual & group treatment, as well as intensive mediator training
- Provides education and consultation throughout Central East Region

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BMSYS Sexuality Clinic

- Sexuality Team:
 - ❖ Co-ordinator
 - ❖ 2 Consultants
 - ❖ 1 Central East Regional Educator
 - ❖ 1 Behaviour Technician
- External Consultants:
 - ❖ Forensic Psychologist
 - ❖ Adolescent Psychologist
 - ❖ Forensic Psychiatrist
 - ❖ Psychiatrist
 - ❖ External Expert

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Intellectual Disability & Sexuality

INTELLECTUAL DISABILITY

- Intellectual disability is a disability characterized by significant limitations both in intellectual functioning and in adaptive behaviour, which covers many everyday social and practical skills. This disability originates before the age of 18.

-AAIDD

General Characteristics of Individuals with an Intellectual Disability


- Cognitive Deficits
- Co-morbid disorders
- Culture/Experience
 - ❖ Institutionalization
 - ❖ Sex free or anti sex environments
 - ❖ Abuse or neglectful upbringings

Characteristics of Intellectually Disabled individuals who sexually offend

- Not a homogenous group
- Difficulty learning and retaining abstract concepts
- Difficulty generalizing information and skills
- Lack of opportunity in typical social and living situations
- Lack of opportunity and experience with appropriate relationships

Definition of Sexuality


- Sexuality is an integral part of everyone.
- It is a basic need.
- It is an aspect of being human.
- It can not be separated from other aspects of human life.
- It is not synonymous with sexual intercourse.

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Definition of Sexuality


- It is an energy that motivates us to find love, feel warmth and intimacy.
- It is expressed in the way that we feel, move, touch and are touched.
- It influences our thoughts, feelings, actions and interaction.
- It influences our mental and physical health.

(Langfeldt & Porter, 1986, p.5)

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Sexual Offending Behaviour


- What are we talking about?
 - Pedophilia
 - Sexual arousal and interest in children
 - Hebophilia
 - Sexual arousal and interest in teenagers
 - Sexual Offender
 - Sexual arousal and interest in non consenting adults

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Intellectual Disability and The Law

Prevalence of Intellectual Disability in Sex Offending


- 4% of population has intellectual disability
- Up to 51% of sex offending population has an intellectual disability
- Appears to be disproportionately high

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Prevalence of Intellectual Disability in Sex Offending


- "Unpublished data collected...indicate between 1995 and 1998, the percentage of offenders with an intellectual disability in the prison population has been between 1.4 and 1.8% at any given time"
- This is a far cry from other studies indicating between 4 to 20% of prisoners have an ID

-Lambrick, 2003

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ID and the Law


- "Offending by sexual offenders with an intellectual disability may go unreported due to inconsistent responses by authorities and the belief that this behaviour is merely inappropriate rather than sexual offending"-Keeling et al., 2006

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ID and the Law


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ID and the Law

- "there is a consistent assumption that people with ID who offend should be diverted from the mainstream of the criminal justice system"-Simpson & Hogg, 2001


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ID and the Law

- "Legal prosecution of men with intellectual disabilities who sexually offend is rare"

- "One study of sexual offenders in a secure hospital suggests that men with intellectual disabilities may be detained for relatively less serious offences"


-Thompson & Brown, 1997

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Quality Assurance Measures

QUALITY ASSURANCE MEASURE (QAM)


- Ontario Regulation 299/10
- Came into effect January 2011
- Applies to:
 - ❖ Residential services and supports.
 - ❖ Activities of daily living services and supports.
 - ❖ Community participation services and supports.
 - ❖ Caregiver respite services and supports.
 - ❖ Professional and specialized services.
 - ❖ Person-directed planning services and supports.
 - ❖ Any other prescribed services and supports. 2008, c. 14, s. 4 (1).

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QUALITY ASSURANCE MEASURE (QAM)


What it means for all?

- All agencies must have policies and procedures on abuse that promote a **Zero Tolerance** on all forms of abuse
- Regulation 200/10 requires that all abuse be reported to the police
- The consent of the person is not required

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What is Considered Abuse?

- Sexual Abuse
- Physical Abuse
- Sexual Harassment
- Emotional Abuse
- Verbal Abuse
- Neglect
- Financial Abuse
- Spiritual Abuse
- Exploitation

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**What This Means:
Our Role**

Reporting Abuse

- Once you have enough information to determine that a crime has been committed **NO MORE QUESTIONS SHOULD BE ASKED**
- End the conversation
- Notify the individual that the police will be called


Reporting Abuse

- All alleged or suspected cases of abuse must be reported.
- Do not ask for consent.
- Inform the individual that you must report the incident
- Give them the opportunity to choose to make the call themselves, offer your support.

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Reporting Abuse

- What happens if the client asks you not to report?
 - ❖ Inform them that the law tells you that you have to, that you have no choice.
 - ❖ Again, allow them to decide who is going to make the call to the police.
 - ❖ Help them to understand that this is to help keep everyone safe.

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Reporting Abuse

- Continue to be supportive
 - Note: be careful not to give too much attention
- The danger exists that they will embellish the story in order to gain more attention

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Reporting Abuse


- Ensure no one else talks to the individual
- Police want a “pure version statement” and further questioning can alter their testimony and recollection of events
- Supervisors should not interview staff, witnesses or victims
- All involved should remain “uncontaminated”

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Reporting Abuse


TIPS:

- Obtain information needed to determine or suspect a crime, **THAT IS ALL!**
- **IMPORTANT:** No leading questions
- Document: **Exactly** as clients said it
 - ❖ Medical terminology will rightly cast doubt on who said it
- No needless questions, do not ask identity of staff
- Police will not have to worry about what came from the victim and what was coached

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Reporting Abuse


- In that case, it was clear there was abuse
- It may not always be so clear
- In these cases will still have to be careful not to ask leading questions

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The Justice System

The Justice System

- What it means for the justice system?
 - ❖ Increased reporting
 - ❖ Dealing with potential evidence contamination
 - ❖ Increase in charges, prosecution and convictions

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The Big Questions?

- ### Questions
1. Can individuals with intellectual disabilities serve as credible witnesses in court?
 2. Can individuals with intellectual disabilities be charged and convicted of crimes?
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Question #1


"People with learning disabilities can make effective witnesses at trial if all those members of the CJS who come into contact with them understand and make adjustments to meet their needs. A scheme developed in Liverpool, Witness Support, Preparation and Profiling (WSP&P), is enabling people with a learning disability to give evidence in court when otherwise they would not have been able to be used in a prosecution...The success rate in terms of trials resulting in a conviction is 94%."

-A Life Like Any Other? Human Rights of Adults with Learning Disabilities (Joint Committee on Human Rights)

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Question #1

- Witness Support
 - ❖ Preparing witnesses for court process
 - ❖ Environmental alterations and preparations
 - ❖ Creating profiles of clients based on assessment
 - ❖ Assist in establishing consent and culpability through

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Question #2


- Can they be arrested for sexual crimes?
- Can they be prosecuted and convicted?

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Question #2


- "Legal prosecution of men with intellectual disabilities who sexually offend is rare"
- "One study of sexual offenders in a secure hospital suggests that men with intellectual disabilities may be detained for relatively less serious offences"

-Thompson & Brown, 1997

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Question #2

- ❑ The prevalence of developmental disability in Canada is approximately 3.5% (Statistics Canada, Participation and Activity Limitation Survey, 2001)
- ❑ In a sample of 281 individuals in pre-trial detention, 18.9% had an intellectual disability (Crocker et al., 2007)
- ❑ In a sample of 90 probationers, only 7% had an intellectual disability (Mason and Murphy, 2002)

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Question #2


- ❑ Offender Consultation:
 - ❖ Clinicians within police and courts to provide clinical perspective
 - ❖ Case by case basis to assess for issues such as consent, capacity and deviance
 - ❖ If possible, provide historical or contextual information to facilitate legal process

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Challenges


Challenges to Justice System

- ❑ Challenges to the Police:
 - ❖ Training
 - ❖ Consent
 - ❖ Interference and contaminated evidence
 - ❖ Communication with population

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Challenges to Justice System

- ❑ Challenges to the Courts:
 - ❖ Lack of experience with population
 - ❖ Lack of proper documentation and assessments
 - ❖ Assumption of naivety
 - ❖ Assumption of deviance
 - ❖ Reliability of witnesses

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Challenges to Justice System


- ❑ Challenges to Probation:
 - ❖ Appropriate conditions
 - ❖ Enforcement of conditions
 - ❖ Vastly different environments and cultures
 - ❖ Limited living options

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How Can We Help?


Education

- ❑ Unique challenges of ID
- ❑ Monthly education on diagnosis and implications in crime and response
- ❑ Police providing education to clinicians on procedures and laws
- ❑ Clinicians providing training to police on diagnosis, behaviour and how to support
- ❑ Share best practice risk assessment and research

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Education

- ❑ Need for clarification:
 - ❖ Roles
 - ❖ Rules
 - ❖ Responsibilities

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Documentation

- Document the information **EXACTLY** as it was given to you
- **Do Not** :
 - ❖ Edit
 - ❖ Correct
 - ❖ Censor

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Documentation


- Proper documentation is vital
- Treat any and all documentation as what it is: evidence for the police
- There are a few key guidelines to documenting sexual abuse

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Documentation

Key Guidelines:


1. Document the abuse on the same day it is reported (As soon as possible and before any conversation with others)
2. Do not edit, correct, or censor
 - ❖ Ignore your discomfort
 - ❖ Treat it as evidence
 - ❖ Use the exact language that was used by the victim

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Documentation

3. Writing Style


- ❖ Black ink
- ❖ Professional
- ❖ Edit errors with a single line and continue
- ❖ Do not erase, Do not use white out

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Documentation

4. Rewriting the report

- ❖ You may need to revise the report due to new information, remembered information, or clarification for management
- ❖ Make changes and staple revised report to original
- ❖ **NEVER** destroy the original


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Protecting Yourself

Protecting Yourself

- Tips for protecting yourself:
 - ❖ Clarify your role – ensure that client understands what your job is


 - ❖ Keep clear boundaries- always remember that you are the professional and you follow professional guidelines

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Protecting Yourself

- Tips cont'd
 - ❖ If you are meeting with someone who has a history of making allegations, arrange for meetings only in office settings only.


 - ❖ Ask a co worker to do random checks throughout your meeting and document what they see.

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Protecting Yourself

- Tips for protecting yourself:
 - ❖ Remember: your job is not to meet emotional needs, it is to facilitate ways in which those needs are met appropriately


 - ❖ By doing this, you are modeling and teaching your clients boundaries which in turn reinforces their abuse prevention skills

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Protecting Yourself


- ❑ Tips cont'd
 - ❖ If you are meeting someone at their home, ensure that someone else at home during your meeting or reschedule

 - ❖ Document, Document and Document

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