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## Chapter 12

### Offenders who have a Developmental Disability

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#### Learning Objectives

Readers will be able to:

1. Describe why the rates of convicted offenders with developmental disabilities may be misleading.
2. Describe how the developmental disability may present a vulnerability for offending behaviour.
3. Identify how socio-environmental factors can increase a risk for offending behaviour.
4. Identify how the judicial and criminal justice system create risks for persons with developmental disabilities.
5. Describe the components of state of art treatment for offenders who are developmentally disabled.
6. Describe challenges experienced by persons with developmental disabilities who become the common clients of multiple government and agency sectors.

#### Introduction

In recent years, there has been increased recognition of the challenges that arise when persons with developmental dis-

abilities become involved with the criminal justice system. Persons with developmental disabilities are generally law-abiding members of society. Like society as a whole, some citizens who have a developmental disability will, knowingly or unknowingly, break the law (Conley, Luckasson & Bouthilet, 1992). Individuals, disabled or non-disabled, commit crimes for a range of complex cognitive, social, emotional and economic reasons. There are specific risk factors that correlate highly with the life experiences of persons with developmental disabilities that increase their vulnerability to be perpetrators of certain crimes (Conley et al., 1992; Griffiths, in press). Although Day (2000) has suggested that offending behaviour is uncommon in persons with developmental disabilities, some persons with developmental disabilities will be required to interact with the legal system. In fact, persons with developmental disabilities tend to be overrepresented in their involvement with the legal system. The interaction with the court system may turn out to be a rather uneven and difficult process due to a number of factors. This chapter will review some of the issues related to this population.

### Incidence

People with developmental disabilities represent 2-3% of the general population, but they represent 2-10% of the prison population (Baroff, 1996; Denkowski & Denkowski, 1985; Smith, Algozzine, Schmid, & Hennly, 1990), and the statistics are higher for juvenile facilities and jails (Petersilia, 2000). Prevalence rates vary greatly across studies depending on how the data were gathered. Most of the identified prison inmates with a developmental disability are considered mildly disabled (88%), although some (12%) have moderate or lower levels of intellectual disability (Kugel, 1986). Persons with a more se-

vere disability are considered less likely to engage in criminal behaviour, or are diverted from the criminal justice system (Coffey, Procopiow, & Miller, 1989).

The range of criminal behaviour of persons with developmental disabilities is narrower, but similar to that of the non-disabled population (Day, 2000). The majority of offences are crimes of misdemeanour, less serious felonies, or public nuisance. Day (2000) suggests sex offences and arson are over-represented. The majority of the offences committed by persons with developmental disabilities are crimes against persons (e.g., sexual crimes), followed by crimes against property (e.g., arson) (Baroff, 1996; Noble & Conley, 1992).

#### Vulnerability for Criminal Behaviour among People with the Developmental Disabilities: Fact and Fiction

##### *Dual Diagnosis as a Special Vulnerability*

The focus of this chapter is on those individuals who possess a developmental disability, as well as a mental health problem, who are at risk to becoming, or who are currently entangled in the criminal justice system. There is high incidence of emotional and behavioural disorders among those with developmental disabilities (Stark, Menolascion, Albarelli, & Gray, 1989). Among offenders, this rate is higher. White and Wood (1992) observed that 50% of juvenile offenders, and 56% of adult offenders in a special community probation/parole programme were developmentally disabled. In some programmes, the statistics are even higher (i.e., Day 1988).

People with a mental health problem as well as a developmental disability, present with many complex challenges that may include:

- multiple communication difficulties (e.g., many are unable to verbalise their needs or use picture symbols, sign language or other gestures),
- isolation,
- institutional life experience,
- forced living situations or lack of alternative housing,
- poverty,
- homelessness,
- dependency on others in social problem solving,
- complex medical problems,
- physical disabilities,
- labelling, social stigma and discrimination, and
- limit of choice of living situations.

### *Three Theories of Increased Vulnerability*

As noted above, people with developmental disabilities are overrepresented in the criminal justice system, despite the fact that their crimes are of much less severity. Gardner, Graeber and Machkovitz (1998) reviewed three common theories of explanation for this: the relationship between criminality and disability, social/environmental influence, and the effects of the criminal justice system.

#### 1. Criminality and Disability

At the beginning of the last century, there was common belief that disability was genetically linked to criminal behaviour (Scheerenburger, 1984). Owens (1982) has argued that crimes are committed by persons with disabilities for a number of reasons. They are: unemployed, need money, have emotional problems, follow others, seek approval, act out of impulse, show poor judgement, or have adopted a criminal lifestyle

which they may enjoy. These are the same reasons witnessed in the non-disabled population.

While genetic causality for criminal behaviour among persons with developmental disabilities is no longer accepted, there still remains the argument that the nature of the disabling condition may create vulnerabilities that put the person with a disability more at risk for criminal behaviour. The quote cited below is an example:

Most people with these disabilities have a deep need to be accepted, and sometimes agree to help with criminal activities in order to gain friendship. They may act as lookouts, transport drugs or other contraband, carry a forged check into a bank, or attempt to sell merchandise stolen by others. In an effort not to feel lonely and isolated from their friends, they may willingly go along with any scheme just to be included (Petersilia, 2000, p. 5).

Other authors have suggested the following risk factors associated with persons with disabilities and criminal behaviour:

- poor judgement (Santamour & West, 1977),
- lack of social and cognitive problem solving skills (Brown & Courtless, 1971),
- frustration against society (Santamour, 1989),
- increased risk of psychiatric disorders and associated challenges (Stark, Menolascino, Albarelli, & Gray, 1989), and
- suggestibility and susceptibility to those he/she perceives as having high status (Luckasson, 1988; Santamour, 1989).

Gardner et al. (1998) suggest that these cognitive and per-

sonal-social characteristics represent vulnerability features that combine with a variety of other social influences to increase the likelihood for criminal behaviour.

## 2. Social Environment and Crime

Day (2000) described the typical profile of an offender with a developmental disability as a young male, with mild to borderline intellectual disability, reared in a poor urban environment with a history of psychosocial deprivation, family criminality, behaviour problems/personality disorder, and who has spent considerable time in residential care. This profile was supported in the research by Denkowski and Denkowski (1986). The youths in this study were from poor, broken families, with high rates of mental health and substance abuse, where abuse or neglect was typical. Offenders with developmental disabilities are more likely to stem from low income minority groups (Harris, as cited in Petersilia (2000)). In such a profile, the social learning environment is proposed as the basis for the criminal behaviour (Beier, 1964).

## 3. The Effects of the Criminal Justice System

A major thrust of current thinking places the responsibility for the elevated rates of persons with intellectual disabilities in the criminal justice system squarely on the shoulders of the judicial system. The judicial system faces an inherent challenge when people with developmental disabilities interact with the law. The challenge is to maximise the cognitive and social factors that may help the participants interact with the courts, and at the same time, satisfy the requirements of the legal system (Perlman, Ericson, Esses & Isaacs, 1994). Due to a number of factors (such as the discrepancy between cognitive capability and physical development, and the specialised life experience

of persons labelled as developmentally disabled), the interaction with the court system may turn out to be rather challenging (Griffiths & Marini, 2000).

Most offenders with disabilities (75%) are not identified at arrest, and some (10%) are not identified until in prison (McAfee & Gural, 1988). The majority of offenders with developmental disabilities do not present with physical features that would distinguish them as being intellectually challenged to the lay observer. Additionally, people with a developmental disability present themselves in ways that often hide their disability (Edgerton, 1967). Underidentification could be the result of (i) inadequate testing, (ii) inadequate experience of psychologists and psychiatrists with persons with disabilities, (iii) the defendants' attempts to conceal the disability, and (iv) inadequate training of criminal justice personnel (i.e., judges, lawyers, and police) (Bonnie, 1992; McAfee & Gural, 1988; Schilit, 1989; Smith & Broughton, 1994).

Throughout the entire legal process (arrest and prior to trial, during incarceration, and following discharge), persons with developmental disabilities present greater vulnerability within the criminal justice system. See Table 1 for examples of the vulnerabilities associated with each stage of the justice and criminal process for persons with developmental disabilities.

Gardner et al. (1998) suggest that no single theory (Disability and Crime, Socio-Environmental or Criminal Justice Theory) offers a suitable explanation for the apparent disproportionately high percentage of offenders with disabilities in the criminal justice system. Each theory adds an element to our understanding of the challenges for prevention, intervention, treatment and support. However, the judicial and criminal jus-

tice system pose unique challenges for persons with developmental disabilities.

### **Challenges in the Criminal Justice System**

Petersilia (2000) expressed the dilemma facing the criminal justice system:

On the one hand, we don't wish to excuse the criminal behaviours of offenders who are cognitively impaired. In a world where such persons are finally moving back into local communities and striving to be treated with equality, it would make no sense to demand a double standard in criminal justice matters. In a normalized world, one has to live within society's rules, and accept the consequences of one's actions.

On the other hand, many offenders with cognitive disabilities may not be so much "lawbreakers" as they are low-functioning citizens who lack education on how to function responsibly in a complex society. Some research suggests that they are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or its consequences (p. 5).



**Table 1: Vulnerabilities and the Justice/Criminal System**

<b>Stage in Process</b>	<b>Vulnerabilities Experienced by Persons with Developmental Disability in the Justice/Criminal System</b>
<i>From arrest to trial</i> , offenders who are developmentally disabled are more likely to be:	<ol style="list-style-type: none"> <li>1. Disadvantaged in police interrogations because of impaired understanding of caution and legal rights, and as such, give false confessions (Leo &amp; Ofshe, 1998), or seek approval of authority figures by giving what they believe are correct answers (Ellis &amp; Luckasson, 1985), or confess, provide incriminating evidence, and not plea-bargain (Edwards &amp; Reynolds, 1997; Gudjonsson, 1990);</li> <li>2. Jailed during pretrial because of failure to meet bail or personal recognizance; people held pre-trial are generally more likely to be convicted (Toberg, 1992);</li> <li>3. Declared unfit to stand trial (Valenti-Heins &amp; Swartz, 1993)</li> <li>4. Convicted and receive longer terms than similar offenders without disabilities (Laski, 1992).</li> </ol>
<i>Once incarcerated</i> , offenders who are developmentally disabled are:	<ol style="list-style-type: none"> <li>1. Slow to adjust to expectations, and experience more rule infractions (Santamour &amp; West, 1977; Smith et al., 1990);</li> <li>2. Rarely provided a therapeutic experience or specialised services (Conley, Luckasson, &amp; Bouthilet, 1992; McGee &amp; Menolascino, 1992);</li> <li>3. Given menial and poorly paid work (Cowardin, 1997);</li> <li>4. The target of practical jokes and victimisation (Gold, 1997; Reichard, Spenser, &amp; Spooner, 1982; Sobsey, 1994);</li> <li>5. Likely to show more maladaptive behaviour (MacEachron, 1979);</li> <li>6. More likely to be re-classified to higher security levels because of poor institutional behaviour (Hall, 1992);</li> <li>7. Less likely to experience early release, or parole (Lampert, 1987);</li> <li>8. Considered poor risk for probation (Denkowski &amp; Denkowski (1986);</li> <li>9. More likely to serve a longer sentence (Santamour &amp; Watson, 1982).</li> </ol>
<i>Upon release</i> , offenders with developmental disabilities:	<ol style="list-style-type: none"> <li>1. Are rarely placed in specialised caseloads or given additional assistance or rehabilitation;</li> <li>2. Show higher and quicker rates (60%) of recidivism (Santamour, 1986, 1988; Santamour &amp; West, 1977).</li> </ol>

Participation of persons with developmental disabilities in the legal system is not only a fundamental right, but critical to the belief of normalization (Griffiths & Marini, 2000). If persons with developmental disabilities have the same legal rights as non-disabled persons, those who are accused of breaking the law must also be accountable to, and protected by, the same laws that govern us all. With appropriate supports to the courts, persons with developmental disabilities will be able to access their rights, and better assume their responsibilities in the law.

The nature of the disabling condition requires special understanding if fairness and justice are to be upheld for the individual with the disability who comes into contact with the legal system regarding sexual offences. "Access to the justice system is one of the most fundamental rights of all citizens, because without this access, individuals cannot legally defend any of their rights, and are forced to become dependent on others to advocate on their behalf" (Sobsey, 1994, p. 284).

The rights of persons with disabilities to participate in the judicial process are often unfairly restricted by physical and social access to the courts, rules of evidence, and courtroom procedures which fail to make reasonable accommodation to the diverse needs of the individual (Sobsey, 1994). There are several legal decisions that often restrict the access of persons with developmental disabilities in the courts: competence to be a witness, and fitness to stand trial.

*Capable of being a witness:* Increasingly, persons with developmental disabilities are being given the opportunity to appear as witnesses in court. However, the competence and credibility of such witnesses to give testimony that is valid, consistent,

and accurate, is often still raised (Ericson, Isaacs & Perlman, 1999).

Capable of being a witness, in legal terms, means that the individual understands what it means to swear an oath, tell the truth, or communicate what happened. Individuals with developmental disabilities may well understand what is being said in a legal interview, but may need time and support to provide adequate answers (Roehrer Institute, 1995). People who are unable to communicate that they understand a promise may be denied the opportunity to give testimony, even if they can communicate what happened to them, and they can show that they have not fabricated a story (Richler, 1995).

*Fitness to stand trial:* The law assumes that all people accused of a crime are presumed innocent, and entitled to fair and just trial. In order for the accused to receive a fair trial, s/he must be able to understand the charges, and to assist in his or her own defence (such as giving direction to one's legal counsel). This forms the basis for the concept of fitness to stand trial. According to the Criminal Code of Canada (1999), 'unfit to stand trial on account of a mental disorder' means that the person is unable to understand the nature or object of the proceedings, understand the possible consequences of the proceedings, or communicate with counsel.

There are several common misunderstandings about fitness. First, just because a person is capable of being a witness does not mean s/he is fit to stand trial. The legal situation, when a person with developmental disabilities is involved with the courts, can be very complicated. For example a person may be: competent to be a witness, but not have the capacity to stand trial; competent to stand trial, but not be competent to partici-

pate in all phases of the trial; or competent to stand trial, but not be competent to plead guilty (Valenti-Hein & Schwartz, 1993).

Second, 'fitness' does not mean the person has the capability of acting in his or her own best interests. A person does not necessarily have to make rational decisions that benefit him or herself.

Third, 'fitness' is not the same as 'not criminally responsible'. Fitness is a test of competence at the time of trial; 'not criminally responsible' involves whether the person was, at the time of the criminal activity, able to appreciate the nature and quality of the act for which s/he has been charged. The burden of proof 'for not criminally responsible' is often quite cumbersome and time consuming, and, as such, many parties do not apply the provision.

Fourth, if someone commits an offence, but does not understand the ramifications of his/her actions, s/he is still culpable. In law, ignorance is no excuse. Therefore, even when a person does not know that his/her action breached a law, s/he is still considered responsible for the act.

Fifth, 'unfitness to stand trial' is not equal to developmental delay. In one study, only one-third of defendants identified as "intellectually disabled" were unfit to stand trial; the likelihood of incompetency to stand trial was more likely when the severity of intellectual disability was increased (Petrella, 1995). Generally, individuals with mild and moderate developmental disability are able to interact with the legal system; individuals with severe and profound intellectual disability are often excluded from participation in the legal process (Doe,

1995).

The results from a standardised and individually-administered IQ test are often used to determine the general level of intellectual functioning of the individual. However, these tests pose a particular danger of misinterpretation by the criminal justice system (Fedoroff, Griffiths, Marini, & Richards, 2000). It is vital that the expert witness, who is providing the psychological evaluation, understands that an evaluation of an individual's cognitive ability is more than just an IQ score. It is not just a number, but a continuum of skills that represent both quantitative but qualitative differences in abilities and a different developmental pattern, in both timing and degree (McGee & Menolascino, 1992).

With few exceptions, there are no formal and validated procedures to evaluate fitness to stand trial for persons with developmental disabilities (Everington & Dunn, 1995). Therefore, many defendants are tried without adequate fitness assessment (Bonnie, 1992; Conley, Luckasson & Bouthilet, 1992). Assessment of these factors has been standardised in the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR) (Everington & Luckasson, 1992; Everington & Dunn, 1995). While standardised assessments like the CAST-MR are helpful, they cannot replace clinical assessment (Fedoroff et al., 2000).

There are several differences noted between persons with developmental disabilities who are fit to stand trial and those deemed unfit. Research has noted differences in their understanding of their legal situation and the potential consequences (Petrella, 1995). Persons with developmental disabilities who are found unfit generally have difficulty providing a coherent

narrative about the event. Their understanding of, and ability to participate in the evaluation process, is an important factor in determining fitness (Petrella, 1995). Smith and Hudson (1995) found the understanding of courtroom procedures to be highly correlated with findings of fitness in persons with developmental disabilities. They are understanding of:

- court strategy,
- the concept of pleading,
- the concept of giving testimony, and
- the concept of a jury.

Communication plays a large role in attempting to determine someone's fitness. Persons with developmental disabilities: (i) may reverse terms such as "guilty" and "not guilty" (Smith, 1992), (ii) rarely say they do not understand unless they are asked, (iii) have difficulty following run-on sentences or multiple questions, and (iv) may use pronouns incorrectly or out of context (Ericson et al., 1994). In addition to verbal challenges, many people who have a developmental disability have comorbid physical disabilities, such as impaired hearing, sight or mobility (Ericson et al., 1994). Many people with a developmental disability communicate through pictures, symbols or physical gestures. If assistive communication systems are not used when needed, errors may be made in assessing cognitive skills, including fitness (Ericson, et al., 1994). In some cases, where the person with a developmental disability uses an alternative communication method, the interviewer may need the assistance of someone who can interpret the information. Although it is helpful if the interpreter is familiar with the individual, great care must be taken to ensure that it is the accused and not the interpreter who is assessed (Fedoroff et al., 2000).

The recommendation of 'fitness to stand trial' is made to the court by a physician. However, it is up to the court to make the final judgement. If a person is deemed unfit to stand trial, the legal proceeding must be "set aside". Often the person is sent to a secure psychiatric facility until s/he is fit to stand trial, at which time the court can proceed. This law was basically designed for those who were unfit due to a mental health problem, and whose lack of fitness may be transitory. In some cases, the court will make a "treat to fit" disposition to order necessary treatment to make the person fit for trial (i.e., psychiatric, training in court procedures). However, for many persons with developmental disabilities, fitness may never be achieved. Consequently, the person with developmental disabilities may remain in a psychiatric facility indefinitely being unable to establish fitness and exercise his or her right to a trial (See Fedoroff et al., 2000).

### **Challenges to Treatment**

Traditional approaches to criminal justice intervention for people with a developmental disability and a mental health problem are often ineffective. It is socially accepted that if one commits a crime, swift punishment that is rehabilitative and restorative in nature should follow, in order for the offender to become a contributing member of society. Often, people with a developmental disability and a mental health problem who have committed a crime, especially a non-serious offence, are not acting out of disregard of social laws and norms. Rather, their offence is symptomatic of larger social problems, such as poverty, homelessness, or another life crisis. Placing such people in the criminal justice system is simply *victimising the victim* that only serves to create a cycle of recidivism and eventual habitual conflicts.

Charging a homeless person with a criminal offence and moving him/her through the justice system will not address the issues that contributed to his/her homelessness in the first place. Developmental disability, mental health problems, communication difficulties, complex medical needs, and lack of viable supports are linked to homelessness. By peeling away the layers and examining the broader issues, and looking at the person's life, one can begin to address why s/he is in crisis. Simply put, non-serious offences committed by a vast majority of this population are symptomatic of broader personal, systemic, and social issues, not criminal ones.

Day (2000) suggests that offending in the population of persons with developmental disabilities "occurs in the context of undersocialization, poor internal controls, and faulty social learning compounded by educational underachievement, lack of social and occupational skills, and poor self-concept" (p. 361).

The criminal justice system is designed to provide secure containment of prisoners, and to maintain order with a hope that the punitive procedures will produce an inhibiting effect on criminal behaviour. However, as Gardner et al. (1998) suggest, the premise is based on the belief that the offender has an alternative prosocial behaviour that he or she can select to use after release. This assumption may be faulty when referring to persons with developmental disabilities. A skill development approach to habilitation is required if there is to be effective change in the behaviour post incarceration (Gardner et al., 1998).

Treatment is therefore targeted toward reducing some of the vulnerabilities that have put this individual at risk of offending. In order to develop an individualised treatment plan, a



comprehensive evaluation is necessary. This includes a detailed history (individual and family, the offence and how the person perceives it), medical and mental status examinations, and other related areas, such as personality tests, adaptive functioning, and EEG studies. This forms the basis for treatment planning (Day, 2000). This history and evaluation is totally different from the purpose of the evaluation conducted prior to the trial. Part of the assessment might be evaluation of dangerousness or likelihood of recidivism. There are several clinical tools for evaluating risk assessment (See Resources below). Treatment then flows from the identification of individual vulnerabilities and needs.

Treatment of the dually diagnosed offender poses additional concerns. First, there is the treatment of symptoms of the mental disorder (i.e., medications to treat underlying psychiatric conditions). However, there is no evidence that medication alone represents effective treatment, since it neglects all of the social and environmental factors. The offending behaviours of those with a developmental disability may reflect the influence of a broad range of biomedical, psychological and social-environmental factors. Therefore, treatment must correspond to address the array of factors that directly or indirectly contribute to the offending behaviour (Gardner et al., 1998). In order to address the broader biopsychosocial needs of persons with developmental disabilities (See Chapter 3).

Gardner et al. (1998) have suggested that treatment programmes should address the major factors contributing to a person's criminal behaviour, which may include:

- limited understanding of the nature and consequences of the behaviour;

- impulse control under conditions of increased emotional arousal;
- limited internalised inhibitions under conditions of temptation;
- low self-esteem;
- deficits in internalised social (moral) standards of conduct;
- limited skills in postponing immediate gratification;
- limited conflict resolution skills;
- limited skills in viewing oneself as accountable or responsible for one's actions; and
- other personal factors that may relate to an under-socialised personality, such as isolation and loneliness, or limited social, sexual, vocational or community skills which serve as vulnerabilities for re-offence.

The treatment plan should reflect habilitative rather than rehabilitative intervention. The rehabilitative model rests on the premise that the offender at some time possessed the skills necessary to live a non-offending lifestyle. Whereas, the habilitative model, which is more apt for persons with developmental and mental disabilities (dual diagnosis), is based on the understanding that the person never possessed the skills. Gardner and associates (1998) suggest that the rehabilitative model is faulty when applied to offenders with developmental disabilities because it assumes that they were at some time able to demonstrate some level of personal or social independence.

Day (2000) identified nine key components of a treatment package that offenders may need. They include: (i) providing a legal framework, (ii) life skills training (personal and interpersonal, social, occupational, education, recreational and sociosexual), (iii) counselling and supportive psychotherapy, (iv) treatment/ amelioration of medical distress and mental illness,

(v) socialization programmes, (vi) psychological treatment (self management and coping strategies, or specific programmes for sex offenders or arsonists), (vii) drug therapy, (viii) family and caregiver support, and (ix) rehabilitation, aftercare and relapse prevention. For a complete description of these programmes see Day (2000). Each treatment package would, however, be carefully designed based on the individual needs of the offender.

Additionally, criminal behaviour occurs in a socio-environmental context (Gardner et al., 1998). If the individual returns to the subculture that encouraged a criminal lifestyle, there is little likelihood of positive and sustaining change. Thus, treatment must address issues related to the challenges presented by the environment. Treatment is best done in a community that offers more opportunity for socialization and training (Day, 2000) and generalization (Gardner et al., 1998). Individuals may remain with their families or community-care programme, and use the range of community supports. In some cases, treatment must coincide with alternative placement to reduce the likelihood that the person is exposed to these influences (Gardner et al., 1998). Most critical, according to Day (2000), is access to a full weekly occupational training programme to build skills and give people something to do. White and Wood (1992) provide a description of community programmes. Day (2000) suggests that hospitalised treatment may be required for some if the offence history is serious or persistent, the person poses a danger to the public, or if there is a need for supervision, assessment and treatment that cannot be provided in the community.

### **Specialized Programmes for the Offender with a Developmental Disability**

No single programme can meet the requirements of all offenders with a developmental disability. There is a need for a continuum of treatment options ranging from community treatment and probation programmes, through specialised programmes in forensic mental health facilities, to those involving maximum security in correctional services (Gardner et al., 1998).

Gardner et al. (1998) identify seven model programmes:

1. Interventions for persons determined incompetent to proceed (Norley, 1995),
2. Community parole/probation model (Wood & White, 1992),
3. Community adolescent repeated offender programme (Denkowski & Denkowski, 1985, 1986),
4. Intensive treatment model (Finn, 1995),
5. Developmental residence for adult repeat offenders (Day 1983, 1988),
6. Prison (Hall, 1992; Pugh, 1986), and
7. Specialized treatment for those with a dual diagnosis.

### **Bridging the Gaps Between Sectors and Services**

Professionals from mental hospitals claim that the developmentally disabled offender is not mentally ill. Developmental services often do not have services adapted for the offender. Correctional services would like to remove such persons from their setting, since they are both inadequate and inappropriate for persons who have a developmental disability (Brown &

Courtless, 1967).

In the mental health system, although the presumed mental illness that contributed to the criminal act may be treated, other critical issues (i.e., social skills or vocational needs) go untreated, leaving the person vulnerable to repeated criminal behaviour (McGee & Menolascino, 1992). In developmental services, the typical habilitation services are not sufficiently specialised and diverse to address the needs of the offender (Laski, 1992). In the correctional facilities, persons with developmental disabilities: are victimised by more able inmates, disrupt the programme routine of the facility, and present security risks and training needs that most facilities are unable to meet (Gardner et al., 1998). Brown and Courtless (1967, 1971) suggest that the correctional facilities are ill-equipped in both staff and physical facilities to meet the training and care needs of individuals with more significant challenges. Persons with developmental disabilities require treatment and care in the health and welfare systems, rather than punishment in the criminal justice system (Day 2000).

The concept of a kaleidoscope provides an analogy that identifies what happens to the person with developmental disabilities, and mental health challenges, who faces a criminal charge. S/he is the *common client* of a labyrinth of developmental, mental health, and health services, and the criminal justice system, including the courts, parole and the police. Although the person never changes while moving through this labyrinth s/he will experience an ever changing pattern of interactions, similar to that of a kaleidoscope that changes as it moves. The pieces are the same as when it started out, but as it moves, the kaleidoscope looks different, especially as different people look at it from their various perspectives.

A person who is charged with a criminal offence must wade through the maze of the many systems that are attached to the charge. If an individual is placed on probation following his/her many court appearances, s/he is forced to deal with the bureaucracy of another vast system that is extremely inundated with high volumes of cases to manage. The common client has moved through a number of different systems, and most likely has had several evaluations and labels attached to him/her.

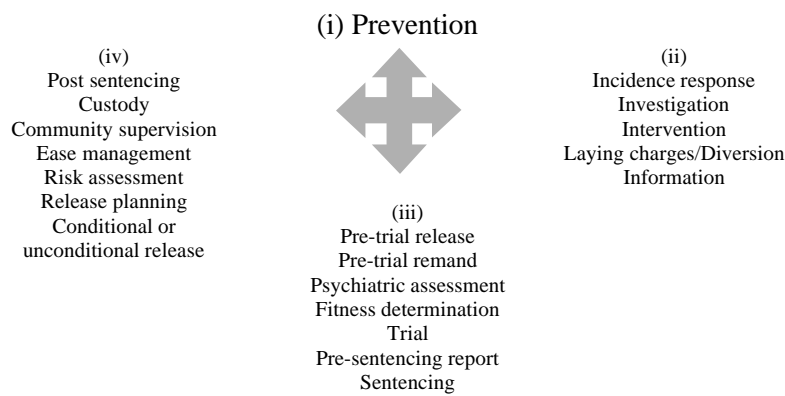
Usually, files are not transferred between systems, and the language varies when a new system picks up the case. All systems label the person something different. Developmental services may identify the person as having Down Syndrome. Mental health may recognize that this person is struggling with a developmental disability as well as a personality disorder, and is dually diagnosed. Justice may label the person an offender. Corrections may label the person according to the offence, and the level of risk associated with it. If the person has an addiction, this will become part of the label. Again, the person has not changed; yet, s/he has been labelled in several different ways, and viewed differently depending on how the kaleidoscope has moved.

In recent years, government sectors and the agencies that report to them, have recognized the need for collaboration and coordination. Reform has to start with a multi-governmental, multi-agency and multi-disciplinary approach that truly focuses on the best interest of the person.

Five key systems must combine resources and establish best practices to respond to those people with a developmental disability and a mental health problem. These are as follows: mental health, developmental services, police, courts, and

corrections. Intervention could occur at various points in the system:

**Figure 1– Target Areas for Intervention**



Petersilia (2000) made the following suggestions for accommodating persons with developmental disabilities in the criminal justice system:

1. Increased justice-related education for clients and their family/care providers;
2. Establishment of a legal advocate to assist arrestees;
3. Routine education of justice system personnel on developmental disabilities;
4. Implementation of a system to identify offenders with developmental disabilities at jail intake;
5. Education of public defenders on how to represent people with disabilities;
6. Establishment of appropriate sentencing options for people with developmental disabilities, including diversion where appropriate; and
7. Management of the transition from prison to community.

### Summary

People with developmental disabilities have a statistically increased risk of being accused of a crime. However, when they become entangled in the justice system, they have a real risk of being deemed unfit to stand trial, or being escorted through the system without their special needs being recognised or accommodated. Appropriate habilitative treatment is rarely provided.

There is no simplistic solution to the reduction of criminal offence among those labelled as developmentally disabled, nor to creating appropriate support and treatment for those who have become involved in the criminal justice system. However, the recent recognition of the inadequacy of the system to support the offender who is developmentally disabled is a first step.

#### Do You Know?

1. What is the difference between *fitness to stand trial* and *not criminally responsible*?
2. What does the term *common client* mean, and what challenges does being a common client present to the person with developmental disabilities who has been accused of a crime?
3. Why have typical correctional approaches failed with persons with developmental disabilities? What type of treatment could be used to prevent offences or reduce repeated offences in persons with developmental disabilities?



## Resources

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