

Developmental Disabilities Awareness in the Justice System

PRESENTED BY THE ARC OF NORTHERN
VIRGINIA AND ADVOCACY PARTNERS
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Outline

- Need for Training
- What is Disability?
- Types of Disabilities
- Developmental Disabilities
 - Speech and behavior
 - Manifestations
 - Culpability
- How Disability Can Lead to Suspicious
- Strategies for Success
- Relevant Laws
- Resources

Why is this training important?

- Individuals with disabilities live, work, learn, and play in our community and their communications, actions and behaviors are often misunderstood
- Without understanding about disabilities, behaviors are easily misunderstood
 - In educational settings
 - In victimization
 - In alleged criminal activity



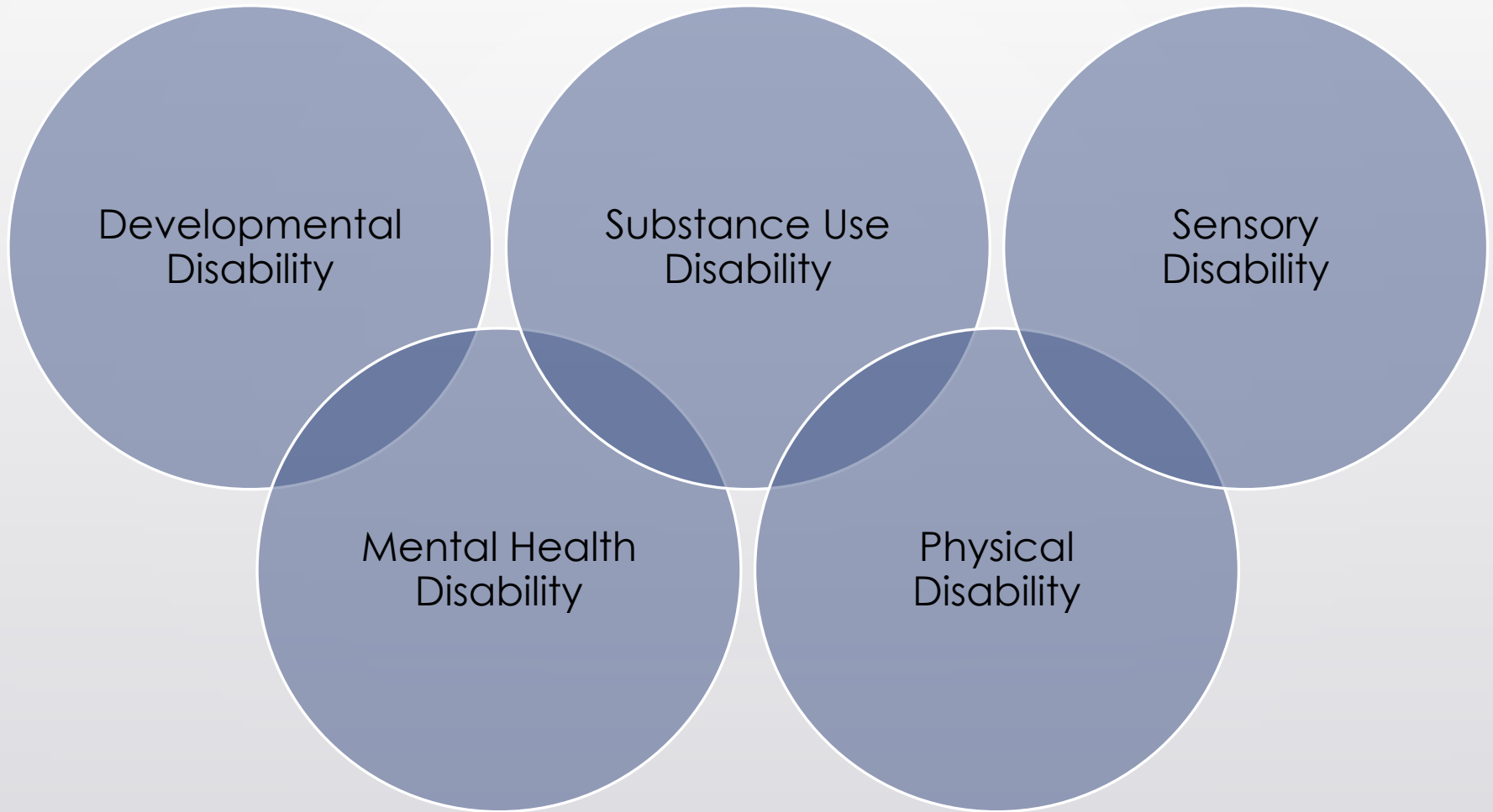
What do we mean when we say “Disability?”

Person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability.





Types of Disabilities





Behavioral / Emotional / Psychiatric Disabilities


- You'll see one or more of these issues to a significant degree for an extended time
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors
 - An inability to build or maintain satisfactory interpersonal relationships
 - Inappropriate types of behavior or feelings under normal circumstances
 - A general pervasive mood of unhappiness or depression
 - A tendency to develop physical symptoms or fears associated with life problems

Some Manifestations:

- Inattention
- Hyperactivity
- Impulsivity
- Defiant behaviors
- Self-injurious behaviors

Examples Include:

- Oppositional Defiant Disorder (ODD)
- Conduct disorders
- Anxiety, Depression, Bipolar, Schizophrenia



DD And MI Need to be Treated Differently within the Justice System

Developmental Disabilities

- Often (but not always) affects cognitive abilities: wide range of capabilities among those with DD
- Lifelong disability (24/7)
- No such thing as “recovery” from a DD
- Requires services and supports for a lifetime. Medications and therapies may be used to improve functioning but can not “cure”.
- Helpers include mental health professionals with training in DD

Mental Illness

- Doesn't typically interfere with cognitive abilities
- Some are chronic while others are temporary and recur in episodes
- Can experience “recovery”
- Focus on stabilization, treatment and recovery through medication, therapy or a combination
- Helpers include mental health professionals with training in MI



Intellectual/Developmental (I/DD) Disabilities Examples

- **Definition:** Cognitive or physical impairment onset before age 22 and likely to continue indefinitely

Limitations:

- Decision-making
 - Self-care
 - Language skills
 - Learning
 - Mobility
 - Self-direction
 - Capacity for independent living
 - Economic self-sufficiency
- Attention-Deficit/Hyperactivity Disorder
 - Struggles with focus and calm
 - Autism Spectrum Disorder
 - Challenges with processing and sensory input, social skills
 - Cerebral Palsy
 - Poor muscle/speech control
 - Fetal Alcohol Spectrum Disorders
 - Lack of focus and coordination, social struggles
 - Fragile X Syndrome
 - Impulse control challenges, anxiety, sensory sensitivities
 - Down syndrome
 - Slower processing speed and cognition challenges



Let's take a deeper dive into DD

Common Characteristics:

- Eccentric speech patterns
- Avoids eye contact
- Difficulty modulating voice volume and pitch
- Rocking, hand flapping, pacing, or other “self-stimulating” behavior
- Avoids being touched
- Extreme or unusual response to light, sound, or other sensory input
- Insensitivity or high tolerance for pain or discomfort from heat or cold
- Difficulty recognizing voice cues from other people
- May not know how to lie



Let's take a deeper dive into DD, Continued

Some other Common Characteristics:

- Difficulty recognizing non-vocal/gestural cues (i.e. knowing that a thumbs up means "good job")
- Difficulty recognizing faces
- Strong food preferences or aversions
- Do not understand compound questions or directions
- Can be easily diverted and may elope:
 - Places with water
 - Playgrounds and parks
 - Stores
 - Places with animals



Possible impacts of disabilities

- Heightened vulnerability
- Limited memory/impaired recall
- Sensory Needs (self-stimulating behavior, called stimming)
- Difficulty comprehending information
- Unable to respond to questions appropriately
- May try to hide incompetence or ignorance



REMEMBER: Each person is different

Possible impacts of disabilities



- Copying or “parroting” answers
- Easily influenced by other individuals (and willing to take blame)
- Eagerness to please authority figures
- May not understand sarcasm, colloquialisms, or social cues
- Immature for age
- Poor impulse control

REMEMBER: Each person is different



Speech and Communication

When a person with DD is asked a question:

- They'll typically produce a response even if they don't understand the question (or know the correct answer)
- "I don't know" may be an automatic answer, especially when feeling stressed; it's rare that a person with DD will use this response accurately
- They may avoid eye contact and may even appear to be hiding something
- If a question is asked repeatedly, you may get different answers each time
- Often individuals with DD have been instructed to respond whether or not they understand the question or know the answer ... they may try different answers until they've given you the response they think you're looking for



Examples of eccentric Speech

- “Where are you?”
 - **“Here”** or **“Arlington”** or **“School”** – which may or may not be accurate
- “What is your name?”
 - **“Caleb”**
- “What is your mom’s name?”
 - **“Caleb”**
- “What is your dad’s name?”
 - **“Caleb”**
- “Where do you live?”
 - **“House”**
- “Are you hurt?”
 - **“I need medicine to make me feel better”** or **“Boo-Boo”**



Aggression

If the individual has an aggressive or self-injurious repertoire, they may begin to self-injure themselves which can look like a variety of behaviors: head hitting, head banging, biting, pinching, scratching his own arms, eye picking, etc.

Aggressive behavior typically results from some kind of aversive environmental event, such as loud noises, being restricted physically, too much talking, denied access to a needed toy or item such as an iPad, stuffed animal, blanket, etc.



Factors in Culpability

- Criminal intent issue
- Relationship between behavior and disability
- Legal system acknowledging these issues in new legislation



How Disability Can Lead to Criminal Charges or Suspicion

Challenges forming peer relationships

- Child pornography
- Relationships with underage partners

Sensory sensitivities and processing issues

- Assault on an officer
- Resisting arrest

Unsupported behaviors

- School behaviors and aggression
- Assault on staff



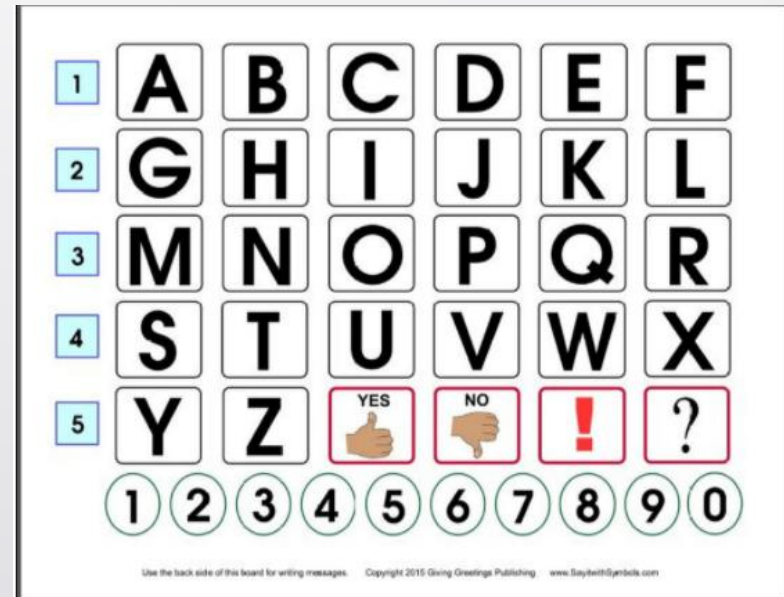
Disability etiquette



- Relax and be kind
- Ask for language and communication preferences
- “Don’t make decisions about me without me!”
- “Don’t patronize me!”

Disability language etiquette

- Always use Person First Language
 - Person with (disability)
- Avoid stereotypes and exclusive language
 - “Normal”
 - “High and low functioning”





STRATEGIES FOR SUCCESS

Use	Use open and unambiguous Body Language
Keep	Keep your hands visible and your body relaxed
Explain	Explain your actions before you do them
Avoid	Avoid touching the person (unless you've asked and they've said it's ok)
Don't make	Don't make anyone feel trapped

Be Patient:


- Allow extra processing time (7-second delay)
- Be prepared to restate information and to repeat yourself
- Avoid leading, compound, and complex questions
- Check for understanding by asking for them to repeat *in their own words*

Adapting your work for people with disabilities

When working with people who have disabilities, be aware of each individual's needs and do your best to adapt accordingly



- Use writing, pictures, or stories to communicate
- Speak in concrete terms (avoid abstractions and ambiguity) and use short sentences with pauses
- One size fits all solutions may not be effective – ask the person (and/or their caregiver) for suggestions



Important Laws for Disability and the Justice System

- Americans with Disabilities Act (ADA)
- **VA Code 16.1-274.2** permits educational records to be admitted with juveniles are charged with school-based misdemeanors
- **VA Code 19.2-303.6** allows for individuals diagnosed with autism or an intellectual disability who are accused of a non-violent offense to be considered for case dismissals
- **VA Code 16.1-272** allows circuit court judges to waive mandatory minimum sentences for children convicted of criminal offenses and allows for the consideration of Adverse Childhood Experiences (ACEs) and adolescent development factors



Laws from 2020 Session

- **VA Code 19.2-83.3** has a number of provisions, including a prohibition on chokeholds, requirements to de-escalate prior to using force, and mandatory de-escalation training
- **VA Code 19.2-298.02** allows prosecutors to drop charges for good cause
- **VA Code 53.1-40.02** expands earned sentence credits for good behavior for nonviolent inmates. It also creates discretion for compassionate release for terminally ill or permanently disabled prisoners, as well as geriatric release.



Law from 2021 Session

- **SB1315/HB2047/SB1383** Allows evidence of defendant's mental condition to be entered if it shows the defendant didn't have intent required if mental illness and/or intellectual and developmental disability are present. Disability status can be considered in deciding bail and sentencing. Attorneys working in the criminal defense field must have two additional hours of continuing legal education, which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities.



Resources and help

- The Arc of Northern Virginia, www.thearcofnova.org
 - Free information and referrals for families
 - Justice resource guides for families AND attorneys
- The Arc (national), www.thearc.org
 - National Center on Criminal Justice and Disability
- Advocacy Partners, <https://advocacy-partners.com/>
- Local DOJ ADA Division
 - Steve Gordon, steve.gordon@usdoj.gov
- Local Community Services Board, 703-228-5150
- NACDL, <https://nacdl.org/>