



Resolution on the Human Rights of Individuals with Intellectual/Developmental Disabilities in the Justice System

An official statement from the Global Alliance for Behavioral Health and Social Justice (formerly the American Orthopsychiatric Association)

The Global Alliance is committed to the application of principles of human rights and social justice to policy development, community action, and systems change related to behavioral health and well-being. In line with these values and in support of the United Nations Convention on the Rights of Persons with Disabilities, we are gravely concerned that individuals with intellectual and developmental disabilities (I/DD) are overrepresented in interactions with the justice system and face dangerous conditions once incarcerated.

I/DD, which include autism spectrum disorder (ASD) and intellectual disability (ID), are conditions characterized by cognitive, behavioral, physical, or language delays/difficulties. Individuals with I/DD are overrepresented in interactions with the justice system for reasons such as the devolution of responsibility from mental health and disability care systems to police, manipulation by others leading to involvement in illegal activity, or misunderstandings with law enforcement that can lead to arrests and, at times, wrongful confessions.

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Representation of those with I/DD in the U.S. justice system is reported as follows:

- 4-10% of individuals in prisons and a higher percentage of those in jails and juvenile detention facilities have I/DD, while I/DD is diagnosed in 2-3% of the general population; and
- Rate of ASD is up to 4 times higher in populations that are incarcerated than the general population

Once incarcerated, individuals with I/DD are vulnerable to physical, sexual, and verbal abuse; exploitation; theft; and harassment. They may struggle managing in a strict, rules-based environment, consequently incurring infractions that lead to loss of privileges, solitary confinement, and additional sentences. People with ID are more likely to serve longer sentences due not only to infractions but also to structural barriers, such as unclear regulations and requirements in place for early release. Individuals with ID are also particularly affected by the lack of adequate behavioral health treatment in jails and prisons, given that mental illness and substance use are more prevalent for those with ID than in the general population. The difficulties for those with I/DD who are incarcerated are compounded by other systemic issues, including racism and socioeconomic barriers, within the justice system.

Policy and practice development and implementation must account for the specific needs of individuals with I/DD in both prevention and intervention strategies.

For prevention, our recommendations include:

- **Special education system.** The school-to-prison pipeline disproportionately includes children identified for special education, including those with I/DD. School resource officers and school professionals too often criminalize behaviors that are expressions of I/DD and/or symptoms of a mental health concern or traumatic stress. Systems-level changes in schools, such as implementation of restorative justice rather than exclusionary detentions and suspensions, are needed. Additionally, greater investment in supporting the strengths of children with I/DD in the education system is needed.
- **Community supports and system collaboration.** Prevention strategies must include community supports that meet the needs of individuals with I/DD and their families. Funding for programs, such as adult vocational training and community-based housing, must be increased. These supports must be implemented in collaboration with other systems, including the education, behavioral health, and justice systems. Incorporating a human rights lens into all systemic work and structures will have a profound impact on all aspects of treatment and supports for individuals with I/DD.
- **Interactions with law enforcement.** Involvement in the justice system begins with interactions with law enforcement. Law enforcement officers need crisis intervention training to learn constructive approaches and de-escalation tactics for working with individuals with I/DD. Co-responders, professional

staff from the behavioral health and disability systems, should be assigned as partners to police to facilitate de-escalation, rapid assessment, and referrals into behavioral health and I/DD programs.

- **Diversion programs.** Individuals with I/DD should be offered alternatives to incarceration when possible that meet the social, behavioral, and cognitive needs of the population. Attorneys and judges should consider individuals' I/DD diagnoses when making pre-trial and sentencing recommendations and should utilize diversion programs as an alternative to jail or prison.

For interventions to address the conditions in which individuals with I/DD are incarcerated, our recommendations include:

- **Screening.** Many jails and prisons do not currently assess for I/DD upon admission. Appropriate screening procedures to identify those with I/DD are needed to provide services in compliance with the Americans with Disabilities Act (ADA).
- **Safety protections.** As those with I/DD are particularly vulnerable to victimization, added precautions should be put in place to ensure their safety and to prevent their manipulation and victimization. These precautions should not involve segregating those with I/DD (*i.e.*, conditions like solitary confinement), but rather should seek to ensure active monitoring to prevent exploitation and abuse.
- **Jail/prison environment.** The jail/prison environment includes many factors that exacerbate sensory difficulties for those with I/DD. Individuals with ASD have noted how the loud noises in carceral settings, for example, make it difficult for them to function. Conditions in the jail/prison environment should consider the unique sensory needs of those with I/DD and comply with ADA in providing accommodations.
- **Programming.** Programs in jails and prisons, including educational programs, should be inclusive of the needs of those with I/DD. Such programming should work in collaboration with community programming and ensure that the individuals from this population have opportunities for early release.
- **Behavioral health treatment.** Given the comorbidity of I/DD and a mental health diagnosis or substance use concern, increased behavioral health treatment funding in jails and prisons is necessary to better support these individuals.
- **Reentry supports.** Because transitions can be especially difficult for those with I/DD, reentry support should begin prior to release and continue after release in collaboration with community-based services and programs. These supports should consider the specific needs of those with I/DD.

The Global Alliance recognizes that individuals with I/DD have specific needs to be considered to prevent incarceration and to provide appropriate services and treatment for those who are currently incarcerated. We support the above recommendations and other policy and implementation efforts that support the human rights of those with I/DD and focus on solutions to reduce incarceration rates of this population and improve conditions for those who are currently incarcerated.

<p style="text-align: center;">Additional Resources</p> <p>ACLU (American Civil Liberties Union)</p> <p>ADA (Americans with Disabilities Act)</p> <p>Clark v. California</p> <p>Fazio, R. L., Pietz, C. A., & Denney, R. L. (2012). An estimate of the prevalence of autism-spectrum disorders in an incarcerated population. <i>Open Access Journal of Forensic Psychology</i>, 4, 69-80.</p> <p>The Marshall Project</p> <p>United Nations Convention on the Rights of Persons with Disabilities</p> <p>U.S. Department of Justice Bureau of Justice Statistics</p> <p>Vera Institute of Justice</p>	<p style="text-align: center;">Relevant articles from the <i>American Journal of Orthopsychiatry</i></p> <p>Fleming, C. M., & Nurius, P. S. (2020). Incarceration and adversity histories: Modeling life course pathways affecting behavioral health. <i>American Journal of Orthopsychiatry</i>, 90(3), 312-323.</p> <p>Roos, L. E., Afifi, T. O., Martin, C. G., Pietrzak, R. H., Tsai, J., & Sareen, J. (2016). Linking typologies of childhood adversity to adult incarceration: Findings from a nationally representative sample. <i>American Journal of Orthopsychiatry</i>, 86(5), 584-593.</p> <p>Thomas, E. C., Bilger, A., Wilson, A. B., & Draine, J. (2019). Conceptualizing restorative justice for people with mental illnesses leaving prison or jail. <i>American Journal of Orthopsychiatry</i>, 89(6), 693.</p>
<p style="text-align: center;">How you can help:</p> <ul style="list-style-type: none"> • Join our Justice Reform Task Force. Learn more at https://www.bhjustice.org/task-forces-and-committees • Petition local policymakers for changes such as reducing detention and supports for reentry for individuals with I/DD. • Forge new partnerships for advocacy and community strengthening to support the I/DD population. 	

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