

A Disabled Justice for the Disabled Victims?!

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Abstract

Anyone can be victimized by crime. People who have a disability can be more vulnerable to victimization than others in society. People with a developmental disability can be less able to recognize, avoid danger, and protect those selves or escape harm. Furthermore, victims of crime who have a disability can be less able to contact law enforcement and, without disability accommodations, help in the investigation of their victimization. Sensitivity to the needs of crime victims with developmental disabilities, whether the disability existed prior to the victimization or was caused by it, is essential to provide effective victim assistance. Social attitudes often reflect negative myths and stereotypes. The justice system may seem to be disabling to response to victims with developmental disabilities effectively and appropriately due to such myths about the disabled victims.

Key words: Disabled victims; Vulnerability; sensitivity; developmental disabilities; access to justice, and Victimization.

Introduction

The State of California' definition of developmental disabilities is:

A disability that originates before an individual attains the age of 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public

Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(Lanterman Developmental Disabilities Services Act, W.I.C. 4512).

An important implication of this definition is that people with developmental disabilities are not a homogeneous group. By definition, people with physical disorders such as cerebral palsy or epilepsy with normal levels of intelligence are considered to have a developmental disability. In addition, cognitive impairments run the range from mild to severe. A person with mild mental retardation functions much differently than an individual with severe mental retardation. The first individual may be able to live independently and work in the community. The latter individual would most likely reside with family members or in some type of institutionalized setting. It is important to recognize that defining developmental disabilities and subsequently determining whether an individual fits into this category is not a simple process. Understanding the potential distinctions between the different capabilities of people with developmental disabilities is important when studying this population because it is highly likely that risk of victimization varies based on the distinct types of disabilities a person with developmental disabilities has, although this has never been studied.

My attendant yelled at me. She hit me. She bruised me. She strapped me to the bed and I would stay in bed for hours. She threw my clothes away. She got rid of things that belonged to me so she could move her things in. They were mine and she threw them out.

I am not a kid. I hired her to help me. She worked for me. It was wrong. She was not respecting my rights. I was going to call my social worker but I was scared. I didn't want her to bruise me or kick me out of my home. She put me in a hotel for a weekend so she could have visitors. She kicked me out of my own home.

The woman still works in the same apartment building where I live now. I'm still afraid. What she did was wrong. I want respect in a nice manner. I want to be kind and ethical and I want my attendant to be that way too. (Wisconsin Coalition Against Domestic Violence. 1996-97. p. 13).

A woman ,with intellectual disabilities was raped by her father and brother (as a child. In addition, she was repeatedly raped during her 33 years in an institution. She has been free of sexual assault only for the last few years of living in the community. No arrests were made.

(Sorensen. 1997, p. 1)

These stories illustrate the types of victimization and treatment experienced by some people with developmental disabilities. As a group, it is suggested that they are more vulnerable to, and may experience, a greater range of victimization (e.g., from petty theft to repeated sexual and physical abuse to financial fraud) than the average person

without a disability (Petersilia, 2001; National Research Council, 2001; Williams, 1995). Research, while limited, indicates that people with developmental disabilities experience greater amounts of both initial and repeat victimization (Sobsey, 1994). They also appear to have a more difficulties navigating the criminal justice system.

1) Vulnerability to victimization

Research on victimization has expanded over the past decade to include a broad range of specially protected populations, including children, the elderly, gays and lesbians, women, and people targeted because of their race, religion, or ethnicity. However, there has been a lack of basic research on the victimization of people with developmental disabilities.

Despite significant barriers, some research has been conducted on the victimizations of persons with developmental disabilities. This research, while sparse, shows that members of this population face a greater risk of initial victimization, multiple victimization, and repeat victimization (Sobsey, 1994; Williams, 1995;

National Research Council, 2001). In addition, anecdotal evidence suggests that people with developmental disabilities are vulnerable to sexual assault and abuse (Sorenson, 1997); physical assault (Sobsey, 1994; Williams, 1995); theft, robbery, and financial exploitation (Williams, 1995; The Roeher Institute,. 1994; President's Committee on Mental Retardation, 1991); and psychological abuse and institutional abuse (Sobsey, 1994; Sobsey and Mansell, 1990).

Conducting research on the victimization of adults with developmental disabilities is important because of the essential lack of research on this population. In addition, there is evidence of a population growth in the number of people diagnosed with developmental disabilities.

The victimization of people with developmental disabilities is potentially different from victimization in the general population. Although research in this area is scant and most of it has been conducted outside the U. S. However, the research that has been conducted consistently shows a rate of victimization much greater than experienced by the general population (Luckasson, 1992).

Holding (1997) outlines the significant obstacles and vulnerabilities people with developmental disabilities face. For example, one sexual assault victim with cerebral palsy is quoted as saying "When you are disabled, you're an automatic target ... you might as well wear a red light on your head that says, Here I am. Come and get me" (Holding, 1997). A central question in studying the victimization of people with developmental disabilities is the nature and scope of the crimes committed against them.

People with developmental disabilities may experience both conventional victimization (e.g. burglary, rape, assault) and less conventional victimization resulting from their increased vulnerability (e.g. having food withheld, being restrained). There is a broader array of the types of victimization people with developmental disabilities may experience as compared to people without disabilities because those with developmental

disabilities are members of a legally protected special population.

While victims with developmental disabilities can experience conventional forms of victimization by offenders motivated for reasons not related to their disability (e.g. robbery motivated by need for quick cash), these victims may also experience victimization that is directly or indirectly related to their disability (e.g. neglect, psychological abuse). The effect of these forms of victimization can be significant because it is often perpetrated by someone the victim trusts and relies upon for care. This can result in a loss of support, esteem, self-assuredness and independence for the victim with developmental disabilities.

people with developmental disabilities may be more vulnerable to victimization because they often make good targets. These individuals are usually less likely to recognize dangerous situations, tend to be less able to protect themselves, often misinterpret social cues, and are not often successful in obtaining help from the criminal justice system. In addition, individuals with different levels of disabilities may be at risk for characteristically different types of victimization, multiple reasons why people with developmental disabilities are often targeted for crime, Including:

- 1) direct and socially mediated effects of the disability;
- 2) real and perceived vulnerability;
- 3) lifestyle issues resulting from disability, such as social isolation;
- 4) aspects of the care giving relationship, such as they are usually more dependent upon care givers;

5) the pervading cultural myths and stereotypes about people with developmental disabilities.

Having a developmental disability increases the risk of victimization in that it can directly affect the ability of an individual to protect himself or herself (National Research Council, 2001; Sobsey & Calder, 1999). A person with a developmental disability may have physical and/or cognitive impairments that may make it difficult to escape from victimization or they may have impaired judgment about what situations are potentially dangerous. For instance, people with mental retardation are more likely to rely on public transportation because they are often denied driver's licenses, and may be less likely to pick up social cues when others are potential offenders.

The socially mediated effects of having a developmental disability are, in Essence, society's response to the disability (National Research Council, 2001; Sobsey & Calder, (999). That is, people with developmental disabilities are often taught unquestioning compliance and are taught to obey authority figures, including caregivers. Consequently, people with developmental disabilities often do not say "no" to something that they do not want to do. People with developmental disabilities face a higher risk for victimization than the general population because of their real or perceived vulnerability. This vulnerability can open up individuals for victimization as it makes them suitable targets. A suitable target coupled with a motivated offender and lack of capable guardians will often result in victimization.

In terms of sexual abuse, people with developmental disabilities may be more vulnerable because they are less likely to be educated about their sexuality. Furthermore, students with developmental disabilities are often systematically excluded from sexual education classes. This exclusion either results from the fact that high schools are not teaching sex education classes at all, or the classes are not being modified for students with developmental disabilities. Not educating the members of this population regarding their sexuality can result in making the victim less able to recognize what sexual abuse is and less able to resist. This can result in making it much easier for perpetrators to target people with developmental disabilities for sexual manipulation.

2) Myths: the causes of social isolation

People with developmental disabilities tend to be socially isolated from the community. In addition, they may stay in risky or exploitative situations because they have few alternative. This, coupled with the fact that they often have a greater dependence upon others for long-term care, makes them prime targets for victimization. In addition, people with developmental disabilities often have spent portions of their lives in institutions or in family situations where many of their decisions were made for them. This type of dependence can result in the person with developmental disabilities being poorly prepared for independent living in the community. This could result in their becoming more vulnerable to victimization and consequently, targeted. Not only does this increased dependence make this population more vulnerable to victimization, their social and/or physical segregation from society does so as well.

Victims with developmental disabilities are not viewed as credible mainly because of the cultural myths and stereotypes that many people harbor about this population. Sobsey and Mansell (1990) have identified five myths about people with developmental disabilities that contribute to both their victimization and to the view that they are not credible. The first is the "dehumanization" myth, where they are thought to be "vegetables" and not full members of society. The second is the "damaged merchandise myth," in which they are thought to have a diminished quality of life compared to those without developmental disabilities. In its most extreme form, believers of this myth argue that those who are "damaged merchandise" have worthless lives; thus, killing them is the humane thing to do. This is the rationale often heard for "mercy" killing. The third myth is "feeling no pain," in which it is believed that people with developmental disabilities are immune to pain and suffering. As one prosecutor said, in explaining why he was not prosecuting cases against perpetrators of abuse, "Well, you know, they are retarded. They can't really feel pain" (President's Commission on Mental Retardation, 1991, p. 41).

The fourth myth is the "disabled menace" myth, in which the person with a disability is portrayed as a menace to society because they are dangerous and unpredictable. The fifth myth is the "helplessness" myth, in which the person with developmental disabilities is disempowered because of their portrayal, accurate or not, as completely vulnerable.

The Office for Victims of Crime (Tyiska, 1998) discusses three additional myths that result in the stereotyping of people with disabilities. The first myth is the belief that individuals with

disabilities are suffering. The second is that individual with disabilities are not capable of making choices for themselves. While some individuals with mental retardation may need more support, they are capable of making choices and have the right to be empowered to do so. The third myth is that a person's disability is "contagious" and "not normal." Unfortunately, this speaks to a nondisabled majority defining what normalcy is. These stereotypes, coupled with the cultural myths outlined above, may contribute to the victimization of people with disabilities, Furthermore. it is because of these eight myths that allegation of crimes against people with disabilities, especially developmental disabilities, are often not regarded as credible or reliable. Additionally, some academics believe that these myths provide a basis for denying the existence of abuse and victimization of individuals with developmental disabilities (Tharinger, et al., 1990).

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3) Access to justice for silent Victims

As is true in the general population, according to the research literature, males are more likely to be the perpetrators of physical and sexual abuse against people with disabilities. One study of abuse in an institutional setting found that males commit more abuse than the female employees do. The researchers concluded this was due to the fact that the male employees were often assigned to handle the aggressive and "difficult" clients (Marchetti and McCartney, 1990). While this may explain physical violence, it does not explain the reason for sexual victimization. One explanation may be that people with the proclivity for sexual abuse may be drawn to these jobs. Researchers have found that known sex offenders have taken

jobs as attendants to people with disabilities in institutions, group homes, and private residences (Sobsey and Mansell, 1990).

Offenders may be motivated by anger, a desire for power or control, or simply because of the belief that attacking a person with a disability gives them the least risk of being discovered. Some offenders of people with disabilities perceive this population to be powerless and the least able to identify them (Andrews and Veronen, 1993; Furey, 1994). In addition, studies indicate that the place of residence is the most common location for the abuse/assaults to occur (Sobsey, 1994).

Access to justice for victims with developmental disabilities is predicated on several issues, including the conservatorship and legal status of the victim, criminal justice system response to the victim and the social service system response. The response by the social service and criminal justice systems is often made more complicated both by system politics and the direct role of the institutions in contributing to the risk of victimization for adults with developmental disabilities. The fundamental question of why access to justice is limited for many crime victims with developmental disabilities is addressed by examining criminal justice and social service system flow and gatekeeping marks. In addition, the institutional measures that contribute to lack of access to justice, including systemic issues and politics are elaborated upon. Relatedly, the issue of conservatorship and the Rights of persons with developmental disabilities in relation to issues of consent and competency are discussed. The goal of this study is to understand the prevalence, nature, and risk of victimization of adults with developmental disabilities. These

issues are directly affected by how criminal justice system personnel respond to this victimization in that if cases are not investigated and prosecuted, reporting is less likely to occur.

4) Reportability and invisible Victims

Before a criminal event can involve the criminal justice system, a series of decisions must be made. First, the crime must be noticed and defined as resulting in victimization. Second, a decision must be made regarding whether the victimization is truly a crime and warrants the involvement of the criminal justice system. Third, a decision must be made to report the crime to police. It is this last issue that is key when considering the criminal justice system response to victimization. "The victim of criminal behavior may be the most influential of all criminal justice decision makers" (Gottfredson and Gottfredson, 1988, p. 15) because most crime is only brought to the attention of law enforcement through the reporting of crime by victims. Consequently, the victim's decision to report or not to report is the primary filter in this point can profoundly affect not only the outcome of the case, but future decisions to report victimization by the victim and their advocates.

The police are not usually involved in cases where a person with developmental disabilities has been victimized. In fact, many interviewees felt as did one respondent who commented "..... Police act like people with developmental disabilities have cooties. Many researchers believe that police officers and investigators lack motivation to conduct investigations involving victims with developmental disabilities because of multiple hurdles, including the belief that the victim cannot identify the

offender (Hook, 2001), the Victim will make a poor witness (Rogers, 1999; Hook, 2001; Mc Nulty, Kissi – Deborah and Newsom – Davis, 1995), Lack of understanding of the Victim's communication patterns (Keilty and Connelly, 2001), and the belief that prosecutors will be reluctant to dispose of the case (Hook, 2001).

Many conclude that because of inadequate training, police officers often believe the negative stereotypes (e.g. lack credibility) of people with disabilities as fact (Petersilia, 2001; Jackson, Cockram and Underwood, 1994). McAfee and Musso (1995) in a 50-State analysis of disability training for police officers found that only mental illness received significant attention in police training manuals. In addition, police experience may not make a difference either. McAfee, Cockram, and Wolfe (2001) found that neither experience nor training had an impact on how police officers indicated they would respond to cases involving persons with mental retardation. The researchers conclude that "police officers receive little training that is beneficial for either the officer or persons with disabilities.

The response by prosecutors is, arguably, the most important aspect of the criminal justice system response. While the decision to report a crime is the primary filter on whether a case enters into the criminal justice system, prosecutors have the ultimate authority on the disposition of a case. Prosecutors play a vital gate keeping by having the power to decide who will be charged, what the charges will be, if a plea bargain will be offered, and determining the terms of the plea bargain. In addition, the decisions made by prosecutors, are by and large,

immune from review (Spohn, Beichner, and Davis-Frenzel, 2001). Consequently, prosecutors have enormous discretion in pursuing or dropping cases without facing formal controls over the exercise of this discretion (Gottfredson and Gottfredson, 1988).

The basic problem facing victims with developmental disabilities is that they are not usually considered "stand-up" witnesses. As will be addressed in more detail, victims with developmental disabilities are often not viewed as being either reliable or credible, especially by professionals within the criminal justice system. Many Victims feel the Police are rarely involved, [they] say "they are retarded. I have never known the police to get involved".

5) Consent and Competency: the problematic issues

Unless they are restricted from making life decisions through conservator ship, adults with developmental disabilities are presumed to have the competency and capacity to consent for themselves on all matters related to their person. Unless proven otherwise, people with developmental disabilities are believed to have the inherent ability to make rational decisions if they have been given sufficient information to give consent and the consent was voluntary (Dinerstein, 1999). Critical to this ability to give consent for adults with developmental disabilities, is not only the amount of information they are given, but that it was provided in a manner in which it was understood (Dinerstein, 1999). In addition, it is essential that they make their decisions free from coercion from all sources, including care providers, and family members.

Relatedly, competency involves the ability to recall and describe events, to understand the difference between a truth and a falsehood, and to understand the obligation to tell the truth (Valenti-Hein and Schwartz, 1993). As addressed previously, the issue of competency is important in situations where the victim with developmental disabilities needs to report the victimization to law enforcement, or is called upon to testify. Dinerstein (1999, p.5) recommends the following questions be addressed to determine competency:

- 1) Can the person tell the difference between true and false statements?
- 2.) Does the person understand the obligation to tell the truth?
- 3) How does the person's general intellectual ability relate to perceptions of the event'?
- 4) How good is the person's memory and ability to communicate?
- 5) If the witness cannot perform the above functions completely, which, if any of the functions can the person perform partially?
- 6) What accommodations might help the person participate as a witness?

For victims with developmental disabilities, the importance of this test for competency cannot be overstated. As Hook (2000) concludes, "The competency exam is the fundamental hurdle that victims with intellectual disabilities must cross if they are to be heard in a court of law" (P. 78). It is important, however, to note two things when considering competency. First, competency does not equal credibility. An individual may be competent, but that does not mean that they are credible.

Competency refers to the individual's ability to provide reliable testimony, while credibility refers to how believable that testimony is (Valenti-Hein and Schwartz, 1993). Second, Competency, just like developmental disabilities, is a multidimensional concept (Valenti-Hein and Schwartz, 1993). Individuals with developmental disabilities can have contextual competency in that they are competent in some areas and not in others. For instance, a person with developmental disabilities may be competent to make decisions about medical care but have an inability to take care of their finances.

Finally, it is possible for a victim with developmental disabilities to not have the ability to consent to an act, such as sexual activity, but still be considered competent to testify about it (Rogers, 1999; Dinerstein, 1999). This is possible because the test for competence focuses on whether the individual can tell the truth, while the ability to consent to sexual activity requires the ability to understand the action, and its consequences in a social and community context. In the aftermath of victimization, people with developmental disabilities face an often confusing array of options regarding reporting of the victimization. These victims not only have to navigate an unfamiliar criminal justice system, but the social service system as well. It may be that both systems are working in sync and victims are provided all the supports necessary to ensure the trauma is recognized and the offender is adequately dealt with. However, victims with developmental disabilities will encounter many barriers before they can take the witness stand, the victims not only must prove they are competent witnesses, but they have to endure a courtroom setting that can be intimidating because it is unfamiliar and hostile. The victims may experience confusion,

fear, and conflict over having to confront and speak out against the offender (Massachusetts Task Force, 1993). In addition, victims with developmental disabilities must struggle with communication and language barriers, and will have a tendency towards suggestibility and acquiescence.

Conclusions

Elder abuse and child abuse are both issues that have gained a wide-spread understanding in recent years. Many people, including law enforcement, service providers, and the general public have taken a special interest in the victimization of these populations. The crimes against people with developmental disabilities are, in many ways, comparable to the types of victimization that these other two populations must deal with. Yet, there has been very little recognition of the risks that people with developmental disabilities face except by service providers who work daily with, this community, parents, and the clients themselves. While the needs of people with developmental disabilities do not exactly parallel these other two populations, it is useful to look at what strategies to combat victimization have proven successful with both elders and children. These strategies include:

- 1) create multidisciplinary teams comprised of law enforcement, social workers, and mental health professionals to conduct joint interviews and monitor cases through the criminal justice system, providing referrals to outside agencies as necessary.

- 2) expand children's advocacy centers to include victims with developmental disabilities. These centers are designed to allow law enforcement, Prosecutors, child protective services, victim

advocates, and therapists to work in a single "child friendly" location.

3) create death review teams which can provide an independent review of cases where the death of a person with developmental disabilities is suspected to have resulted from abuse or neglect.

4) prosecutors should create a policy to "fast track" cases brought by victims with developmental disabilities to shorten the length of time from arrest to disposition. This helps insure that victim/witnesses do not become frustrated with continual delays and lengthy cases and helps prevent the problem of fading memories.

5) medical professionals should be educated about the high risk of abuse and neglect in the developmental disabilities community and routinely assess their patients for signs of such victimization.

6) each primary or case management service provider should have a crime

victims advocate to assist victims in their interactions with personnel, in the criminal justice system.

7) create outreach programs for victims of unreported crime to encourage and support victims in reporting crimes against them.

8) adopt interview protocols for victims or witnesses with cognitive and/or communicative disabilities for police, prosecutors and judges.

9) training should be provided for therapists and counselors on how to treat and support victims with developmental disabilities.

While the above recommendations have been effective for other specialized victims of crime, it is not known if these

strategies would be successful for victims with developmental disabilities. It is hoped that as awareness of this population increases, more programs will be developed and more research will be conducted.

Recommendations

While persons with developmental disabilities cut across the lines of racial,

Ethnic, educational, social, and economic backgrounds, they are perhaps one of the least powerful groups. Out of the groups of people who have disabilities, people with developmental disabilities are probably the least organized and, arguably, the least politically powerful. This group does not have a political power base in which to demand programs or systemic changes. Consequently, it is important for the rest of us to advocate for appropriate programs for people with developmental disabilities. Program needs include:

- 1) make victim advocates available in all police stations and court houses;
- 2) fund shelters to be able to accommodate people with disabilities, both through physical access and attitudinal access, more specifically, train personnel in both rape crisis and domestic violence shelters on how to work with special needs populations;
- 3) increase the public's understanding of the issues and needs of special populations by adding awareness training to school curriculums;
- 4) reduce vulnerability and social isolation by expanding the consumers' network of committed individuals they can keep in contact with and report abuse to. This could be along the lines of

a reporting web rather than a linear chain (Williams, 1995). Reporting webs give victims multiple routes of reporting. Linear chain methods of processing reports increases the likelihood of reporting failure in that if one link fails to process the report, the case go nowhere;

5) improve coordination between the social service networks that work with persons with developmental disabilities and the criminal justice system by providing cross-training to both service systems;

6) provide personal safety training and victims' rights. assertiveness and

empowerment training to all people with developmental disabilities.

In sum, it is important to realize that people with developmental disabilities are likely to face more victimization risks than do people without disabilities. In addition, victims with developmental disabilities are faced with a broader array of crimes, including being manipulated out of their money and sexually molested by transportation providers. While this article

is a good first step, it is vital to continue collecting data and developing more programs, like Project Get Safe, specifically for people with developmental disabilities. This is especially important because,

... Persons with developmental disabilities have virtually no ability to organize and advocate on their own behalf without our help. They do not possess the financial, verbal or organizational skills that would be necessary to launch such a campaign. As such, the onus of responsibility on those of us having such capabilities to

work to “end the silence” of victims and defendants with developmental disabilities is ever more pressing (Petersilia, 2001).

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