



Guidelines to support People with an Intellectual Disability through the Court System

**Guidelines for Clerks of Court,
Court Officers including Security Officers
and Volunteers**



For copies of this document in alternative formats such
as Braille, audio tape and
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Introduction

People with an intellectual disability are part of the community and like everyone else, they may be involved in the court system as witnesses, victims and defendants.

People with an intellectual disability are likely to be at their most distressed and least competent within the justice system. The environment is unfamiliar to them, highly formalised and requires high levels of communication and the ability to understand complex rules. They may feel uncomfortable in this setting, become confused about what is expected of them and not know where to go for help. They may find it difficult to ask for assistance or to explain their needs and may present in an inappropriate manner.

This booklet aims to help those working within the court system to be more aware of the needs of people with an intellectual disability.

I. What is an Intellectual Disability?

People with an intellectual disability have low intellectual ability and difficulties in social and adaptive functioning.

“Intellectual disability refers to substantial limitations in present functioning. It is characterised by significantly sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work. Intellectual disability manifests before age 18.”
[American Association of Mental Retardation (AAMR) definition]

It is often difficult to tell that someone has an intellectual disability, although a congenital condition such as Down syndrome is widely recognised. People with an intellectual disability will frequently disguise the existence of their disability. They may be silent, agree to whatever is asked of them without understanding the question, give short answers or become hostile when they feel confused by questions they cannot answer. It is possible that some have a borderline or mild intellectual disability that has not been officially recognised.

2. People with an Intellectual Disability in Court

People with an intellectual disability face some difficulties because of their disability in situations such as the court system. The following list contains some of the difficulties that may affect them.

Communication difficulties:

- difficulty understanding complex information and processes, including directions, procedures, forms, and keeping appointments in new places;
- a restricted vocabulary, not understanding words like “arraigned” and “judicial”;
- a short attention span and easily distracted, making a long trial or wait in court very difficult;
- difficulty understanding questions, although this varies according to how questions are asked; for example, a “why” question is more difficult to answer than a “what” question;
- requiring a long time to think through a reply to a question;
- responding to questions either inappropriately or with inconsistent answers;
- memory difficulties, especially for details, for example, forgetting to bring documents to court; and
- difficulty with abstract thinking, including moral reasoning (Ierace, 1989).

Behaviour:

- difficulty managing stress levels in a formal environment;
- hiding disability by appearing to understand;
- behaving in an inappropriate way, for example, laughing in court or talking in a very loud voice; and
- impulsivity or acting without thinking, for example, calling out to people they know in court.

Task performance:

- difficulty with reading and writing or keeping appointments;
- difficulty understanding the varied roles of the different courts, and the roles of the various court officers;
- difficulty following long, complex sentences;
- giving verbal directions to a place they would be expected to know;
- following long directions, for example: “take the lift to the third floor and then turn left”; and
- organising, structuring and expressing information in an orderly way (*Ierace, 1989*).

3. An Intellectual Disability is not a Mental Illness

Mental illness may be thought of as “a thinking or a mood disorder”, while intellectual disability is “a learning deficit”. Mental illness may be episodic, temporary or cyclical, whereas intellectual disability

is usually long term. While people with mental illness may display extreme irrationality, people with an intellectual disability are usually rational within a limited range of ability. However, symptoms and behaviours can be typical of both. It is also possible for someone to have both an intellectual disability and a mental illness.

4. What to expect from People with an Intellectual Disability.

When someone with an intellectual disability approaches you for assistance, it is important that you answer the inquiry patiently, simply, courteously and precisely. Speak slowly and clearly and avoid technical or legal terms that may not be familiar to the person. Allow time for the person to understand and to respond.

If you tell a person with an intellectual disability to report to the Clerk of Court, you need to explain where the Clerk of Court would be, what he or she did, and looked like. It may be difficult for a person with an intellectual disability to take in so much new information at once. It may be simpler to take the person there.

Often people with an intellectual disability will give the impression of understanding when they do not. It is helpful if you say the same thing in a different way and do your best to see if they understand your advice. Use concrete examples, that is, illustrate your explanation using examples from real life that they can relate to, rather than using abstract ideas.

It is important to explain what is meant in simple terms. Do not give an instruction like “be respectful of the presiding officer”. It would be better to give simple instructions like: look at the judge when he or she is talking to you; keep your hands out of your pockets; only speak when asked a question; or stand when the judge enters the room. Do not give too many instructions at one time. Repeat your advice if necessary and demonstrate the behaviour.

You can check if they understand by asking them to explain in their own words what you have said. Repeat your advice using different words. It may be that they are just agreeing with you without fully comprehending what you have said.

If you ask what a term means, for example the term “the witness stand”, you can then ask them to tell you what it means. Remember that it may be easier to show them the witness stand while you are explaining.

If they require directions to a court or an office, be aware that they will have difficulty following complicated instruction so be prepared to take them there. If you tell them to turn left you should make sure that they understand which way is left.

5. Familiarisation with the Courtroom

It is important for people with an intellectual disability to familiarise themselves with the courtroom before appearing in court as an accused, witness or party to the proceedings. This may occur

the day prior to the listing of the trial. Counsel should make appropriate arrangements in advance for that to occur. Every endeavour should be made to make the facility available. Subject to proper security arrangements being made, let them in, along with any friend, support staff or counsel and identify the witness stand, the place where the presiding officer will sit, where counsel will be located and the site of the jury box. If people with an intellectual disability are being taught appropriate court behaviour, it is important to allow them sufficient time to do this. They may need to practice getting into a witness stand and if they also have a physical disability, they may need assistance to do this. Practice will ensure that they feel more comfortable at their next appearance and that the process operates more smoothly.

They may also visit a court that is in session to see the operation of the court and the numbers of people involved. Simple rules and protocols can then be explained and shown to them, including what to do when entering a courtroom, for example, when and how to bow. People with intellectual disabilities learn better if they are able to practice what is required.

You may also identify if they require any additional assistance such as wheelchair access or an interpreter.

6. Swearing In

Most people with an intellectual disability can understand about telling the truth and can tell the truth. People with an intellectual disability will have

a reading age that is much less than their chronological age or they may be unable to read. They may be reluctant to reveal this information.

If you are involved in the swearing in of people with an intellectual disability as witnesses you will need to ensure that they can read. Their counsel, accompanying friend or support staff may be able to give you this information. If they cannot read, administer the oath courteously and slowly. Also ascertain if they have any hearing difficulty and make arrangements accordingly.

If during the swearing in, it becomes apparent that the witness is unable to read or has a hearing problem, the court officer should refer the matter to the presiding judicial officer.

7. Use of Video Room

If a court declares someone to be a special or vulnerable witness, it may be necessary to arrange the use of the video facility or a screen.

The Acts Amendment (Evidence of Children and Others) Act 1992 (WA) sets out the circumstances under which someone may be declared a special witness (Section. 8 106 R.) and provides for someone to be declared a special witness by reason of mental disability.

The Act sets out the arrangements that may be made to provide support and protection to the person on whom special witness status has been conferred. These include:

- having a person, approved by the court, present during the proceedings;

- the use of closed circuit television and the isolation of the witness from the defendant; and
- where closed circuit television is not available, the use of a one-way screen, or other screening devices, to isolate the witness from the defendant.

People with an intellectual disability may wish to give evidence from a video room by means of closed circuit television where that facility is available. If counsel has taken the appropriate steps to bring that about and you have been notified, they should be shown that facility in advance. People with an intellectual disability will need additional special instruction in the use of the closed circuit television in order to participate. They may then be dealt with in accordance with the procedures appropriate for that room on the day of trial.

8. Gallery Guards

It is important when approaching people who are behaving differently, to consider whether they may have an intellectual or other disability. If they have a hearing disability they may not be aware that they are speaking loudly. Over 35 per cent of people with an intellectual disability also have a hearing impairment. It is important to consider this when dealing with people who are talking loudly and who do not respond to simple instructions. It may be useful to ask them to come outside so that you can explain what is required. See the previous section, which gives tips on speaking with people with an intellectual disability.

9. After The Hearing

People with an intellectual disability, who have no counsel, accompanying friend or support staff, will need the outcome of the trial carefully and clearly explained to them. Court officers may require them to sign documents, for example, bail documents. They will need the conditions explained carefully and simply. There is a need to ensure that they have understood the information given and the importance of retaining the documents and not throwing them away. They may not be able to read and write.

People with an intellectual disability who have no counsel or friend with them may require direction to the location of public transport after a hearing has concluded. They may need assistance to contact a taxi, family member or to arrange transport. It may be necessary for the court staff member to make the telephone call on their behalf or to escort them to a telephone or taxi rank.

If they appear confused or unwell, it would be advisable to offer to telephone a contact person whom they nominate. If someone is extremely confused, upset or unwell then an emergency response may be required, for example, it may be necessary to call an ambulance, the police or Crisis Care.

The skills that court officers employ on a daily basis with distressed and traumatised people are relevant in similar situations with people with intellectual disabilities.

I 0. Contacting the Disability Services Commission

If you need further help when dealing with victims or alleged offenders with an intellectual disability or you believe a person may have an intellectual disability, the following procedure should be followed.

- When interviewing them, ask if they have ever been seen by or received services from the Disability Services Commission (previously known as the Authority for Intellectually Handicapped Persons or “Irrabeena”). Obtain informed consent from them to contact the Commission. If informed consent cannot be obtained, contact the next of kin or guardian. Written consent from the person, their next-of-kin or guardian is required by the Commission before information can be released.
- You should first contact the Records Clerk, Records Section at the Commission. Give the Records Clerk the name, date of birth, surname and any change of surname. Leave your name, position and phone number or that of another appropriate contact person, for example, a supervisor or manager. The appropriate staff member in the Commission will then phone back with the information.
- Phone enquiries should usually be directed to the Commission’s central office:

Tel: 9426 9200

Fax: 9426 9380

TTY: 9426 9315

Free Call: 1800 998 214

- If a person is known to the Commission but has not received services for over five years, you will be referred to one of the following officers:

Senior Referrals Coordinator;

Director, Medical & Specialist Services;

Principal Clinical Psychologist; or

Principal Social Worker.

- If a report is required, you need to state clearly what information is needed, the proposed function/use of the report, for example, a pre-sentence report, and for whom the report is intended, for example, for a judge, magistrate or defence lawyer.

Not all people with an intellectual disability are known to the Disability Services Commission.

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The contents of the document do not represent the views of any of the organisations from which the members of the Committee are drawn nor does the document constitute legal advice which should be relied upon.



making a difference

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