

## Tips and Tools for Working with a Client on the Autism Spectrum

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Presenting on behalf of the Autism Society of Wisconsin

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## Main Points

- Autism Spectrum Disorder (ASD): Diagnosis and Causation
- Features and Characteristics of ASD
- Tips and Tools for Working with a Client on the Autism Spectrum
- List of Resources

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## Autism Spectrum Disorder Medical Diagnosis – DSM V

- Changed in May, 2013
- Currently the only medical diagnosis that covers all individuals on the autism spectrum
- Broad range of people are covered under the diagnosis
  - People with severe cognitive impairment to people with IQs above 140
  - People who need constant care to adults who can live on their own with very little assistance
- Type of autism that will most likely come into contact with the criminal justice system
  - Asperger Syndrome
  - High Functioning Autism

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## What Causes ASD?

- Neurological disorder, generally thought to be present from birth.
- Affects the way the brain processes and uses information.
- Researchers have determined that genetic factors, possibly in combination with environmental factors, contribute to causation of ASD.



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## Features & Characteristics of Autism Spectrum Disorder

- Learning / thinking / processing differences
- Restricted, repetitive, perseverative patterns of behavior, thoughts & interests
- Inflexible thinking
- Sensory processing differences
- Communication differences
  - Language comprehension differences
  - Social relation differences

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## Learning, Thinking and Processing Differences

- Strengths in processing information *visually* versus weakness in processing information *auditorilly*
- Attending differences
- Organizing and sequencing differences
- Concrete, literal thinkers
- Difficulty generalizing old knowledge to new situations
- Good rote memory skills which may far exceed functional life skills

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## Restrictive / Repetitive Patterns of Behavior

- Can present as all-consuming interests in topics, themes or objects
- Strict adherence to rituals or routines
  - Insistence on sameness
  - Difficulty with change



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## Sensory Processing Differences

- Often overly sensitive to touch, noise, light, movement
- "Fight or flight" response is common



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- The outward manifestations of sensory problems are often seen in noncompliance and/or rages/meltdown behaviors that are out of proportion to the situation or stimulus.

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### Communication Differences

- May exhibit echolalia or perseverative speech – especially when under stress
- Language comprehension and auditory processing difficulties
- *Social* communication differences



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### Main Emotions in Autism

- Fear
- Confusion
- Feeling of Being Overwhelmed



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### Legal Issues

- Not a criminally oriented group
- Traits related to becoming victims / perpetrators of crime
  - Problems with social interaction
  - Problems with communication
  - Narrow intense interests
  - Extreme reaction to change, disruption, contact, noise, etc.

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## Criminal Defense Issues

### Burden of Proof Defense

Helpful article: Wauhop, Brian, Comment: *Mindblindness: Three Nations Approach the Special Case of the Criminally Accused Individual with Asperger's Syndrome*, Penn State International Law Review, Spring, 2009

- May not be able to form the mens rea for the charged offense – lack of social awareness
  - §939.23 (3) (intentional) – actor aware that his/her conduct was practically certain to cause a result
  - §939.24 (recklessness) – actor is aware conduct poses risk of harm to others
  - §939.25 (criminal negligence) – actor should be aware conduct poses risk to others
- Mistake of fact defense §939.43 – an honest error of fact that negates state of mind for the offense
- Cross examination issues
  - Demeanor/behavior as circumstantial evidence of intent / consciousness of guilt doesn't fit as well
  - Focus on area of high interest does not necessarily mean premeditation/ expertise
  - Knowledge of traits beneficial in cx of officers dealing with person with AS diagnosis
  - CX of victim/witness with AS diagnosis

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## Criminal Defense Issues

### Police Questioning issues

Helpful articles: North, A.S., Russell, A.J., & Gudjonsson, High functioning autism-spectrum disorders: An investigation of psychological vulnerabilities during interrogative interview, *The Journal of Forensic Psychiatry & Psychology*, Vol. 19, #3, September 2008, p. 323-334 and Salseda, L.M., et al., An evaluation of Miranda rights and interrogation in autism spectrum disorders, *Research in Autism Spectrum Disorders* 5, 2011, p. 79-85.

- Police won't always recognize they are dealing with someone on the autism spectrum
- Persons with the diagnosis may not be more suggestible (false confessions) as a group but tested as more compliant (more willing to waive rights/confess) in stressful situations
- Traits of individual on the autism spectrum may raise issues as to whether statement was voluntary or waiver of rights was knowing/intelligent

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## Criminal Defense Issues

### Competency

#### 971.13 Competency.

- (1) No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

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## Criminal Defense Issues

### Competency

Helpful articles: Forensic Aspects of Asperger's Syndrome, Justin B. Barry-Walsh and Paul E. Mullen, The Journal of Forensic Psychiatry and Psychology, Vol. 15, No. 3, March 2004, pp. 96-107; Emerging Perspectives on Adolescents and Young Adults With High-Functioning Autism Spectrum Disorders, Violence and Criminal Law, Matthew Lerner, MA, et. al., J. Am. Acad. Psychiatry Law, Vol 40, Number 2, 2012, pp. 177-190, and Criminal Responsibility in Asperger's Syndrome, Nachum Katz and Zvi Zemishlany, MD, Isr. J. Psychiatry Relat Sci, Vol 43, No. 3, 2006, pp. 166-173.

- Broad cognitive capacities required for fitness to stand trial in the U.S. are particularly unlikely to be met by individuals with HFASD [high functioning autism spectrum disorder]
- It is difficult to imagine an event less likely to be comprehended by an individual on the autism spectrum than a criminal trial.
- Evaluation by expert in autism necessary -but hard to find

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## Criminal Defense Issues

### NGMDD

#### 971.15 Mental responsibility of defendant.

- (a) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law.

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## Criminal Defense Issues

### NGMDD

Helpful articles: Forensic Aspects of Asperger's Syndrome, Justin B. Barry-Walsh and Paul E. Mullen, The Journal of Forensic Psychiatry and Psychology, Vol. 15, No. 3, March 2004, pp. 96-107; Emerging Perspectives on Adolescents and Young Adults With High-Functioning Autism Spectrum Disorders, Violence and Criminal Law, Matthew Lerner, MA, et. al., J. Am. Acad. Psychiatry Law, Vol 40, Number 2, 2012, pp. 177-190, and Criminal Responsibility in Asperger's Syndrome, Nachum Katz and Zvi Zemishlany, MD, Isr. J. Psychiatry Relat Sci, Vol 43, No. 3, 2006, pp. 166-173.

- Diagnosed development disability – mental defect
- Ex. - Problems with emotion regulation - couldn't conform conduct to the law
- Ex. - Inability to understand and represent mental states of others – didn't appreciate the wrongfulness of the conduct
- Case studies in the articles provide guidance (Katz and Barry-Walsh articles)

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## Criminal Defense Issues

### Sentencing Mitigation

Characteristics of the offender (gravity of the offense, need to protect the public)

- Social confusion
- Inability (as opposed to unwillingness) to perceive effect of behavior on others
- Inability (as opposed to unwillingness) to regulate emotional response to stressful situation
- Behavioral training
- Effects of incarceration
  - Hardship of change / transition
  - Vulnerability to abuse

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## Indicators your client may be on the spectrum

- Information from family members
- Lack of eye contact
- Highly anxious
- Repetitive physical (rocking, flapping) or verbal behaviors
- Concrete, literal responses to questions
- Perseverating on a topic not related to what is happening
- Poor ability to relate what happened in the past

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## Talking with the client about their predicament

- Information gathering to determine eligibility and get bail information
  - Income and assets – Visual support (give person a copy of E-form to follow along)
  - Bail information – Visual support (provide copy of case opening form)
  - Ask questions as they appear on the form in the order they appear – STAY AS CONCRETE AS POSSIBLE
  - Give them the option to say "I don't know"



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## Talking with the client about the case

- Information gathering – discussing the details of the case
  - Description of past events: Due to communication difficulties describing past events may be very difficult for someone on the spectrum
    - Avoid asking for a narrative like "Tell me what happened"
    - Ask specific questions: Where were you? Who was with you? What did you do at \_\_\_\_\_?
  - Discussion of why something happened: This will be extremely difficult for the client with ASD ("why?" involves perspective taking)
  - Understand that body language and facial expression can be very misleading in a person with ASD
  - Not likely to be expressing remorse

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## Talking with the client about the case

- Providing the client with information about future events in the case
  - Client is not likely to be asking questions
  - Provide roadmap in writing of the next few steps of the process
  - Don't overwhelm with lots of talking – stick to what they need to know at that point in time




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## Initial Appearance /Bail Hearing

- Incarcerated client
  - Information to the jail about the client's ASD for person's protection
  - Transition/Change of Routine/Odd Behavior/ Lack of Social Skills make incarceration especially difficult
  - Part of bail argument – need to be released
- Bail conditions
  - Need to be concretely stated
  - Taken literally by the client ( no contact)
  - Rules reduced to writing and client given copy
  - Explain to family member / support person(s)

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## Talking with the client about the case

- Discussing strategic/tactical decisions
  - Meaning of the charges – Give copy of jury instructions (visual support)
  - If possible try to involve a trusted family members to help support and “translate” for the person with ASD about issues such as:
    - Waiving right to preliminary hearing
    - Plea or trial
    - To appeal or not
- Explanation of process – maintain confidentiality where necessary – use “translator” to help with explaining process

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## Court Appearances

- Prior Preparation: Go ahead of time to see the courthouse and courtroom (possibly with a family member)
- Talk to prosecutor and judge ahead of time about nature of client’s disability to make sure court personnel do not misinterpret client’s actions and demeanor and inability to understand nuance
- If client is entering a plea, take extra time going through the plea form and give them a copy ahead of time




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## Court Appearances

### Trial Testimony

- The decision whether to testify or not should be discussed as early as possible
- If going to testify, preparation is essential
- Direct examination questions: should be short, concrete and written out ahead of time
- Need to prepare for cross-examination
- General Preparation for being in the courtroom – go over:
  - Who will be there
  - Where will the client sit
  - When can the client talk
  - When will there be a break
  - Who should the client look at
  - Things the client should not do (based on behaviors seen during earlier contacts)

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### **Working with a Client Who Has Asperger Syndrome**

From the Article "Asperger Syndrome in the Criminal Justice System"  
By Judge Kimberly Taylor (retired), Dr. Gary Mesibow, and Dennis Debbaudt (2009)

- Interview family to find out client's strengths and weaknesses related to his/her autism
- Use simple, direct language/Make questions short, direct, concise. It may help to write questions down and show them to client
- Deal with one issue at a time
- Make sure all individuals understand to whom a pronoun refers
- Take frequent breaks

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### **Asperger Syndrome Challenges for Court Personnel**

- Inability to quickly process and respond to requests, commands and questions
- Unexpected behaviors: laughing, loud vocal tone, poor eye contact
- Not seeming to care about what others are saying or asking of them
- Make statements that seem tactless or brutally honest
- Difficulty understanding slang terms, sarcasm, figures of speech, jokes

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### **Interview Techniques**

- Approach in a quiet, non-threatening manner
- Do not interpret lack of eye contact as disrespect
- Structure questions concretely and literally
- Try to keep your face and body neutral
- Understand that receptive and expressive language are deficit areas for persons with autism
- Consider using pictures and/or writing down thoughts step by step

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## Resources

- **Asperger Syndrome in the Criminal Justice System** By Judge Kimberly Taylor (retired), Dr. Gary Mesibov, and Dennis Debbaudt (2009) Modified and Reformatted for an AS Population by Nomi Kai: [http://www.aane.org/asperger\\_resources/articles/miscellaneous/as\\_in\\_the\\_criminal\\_justice\\_system.html](http://www.aane.org/asperger_resources/articles/miscellaneous/as_in_the_criminal_justice_system.html)
- **Autism: A guide for criminal justice professionals**, The National Autistic Society (UK), <http://www.autism.org.uk/working-with/criminal-justice/autism-a-guide-for-criminal-justice-professionals.aspx>
- Mayes, T. A. (2003). **Persons with Autism and Criminal Justice: Core Concepts and Leading Cases**. *Journal Of Positive Behavior Interventions*, 5(2), 92. (available on LexisNexis)

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## Resources

- **And Justice for All: Unless you have Autism- What the Legal System Needs to Know About People with Autism Spectrum Disorders** by Barbara T. Doyle, M.S. [http://www.autismspeaks.org/docs/family\\_services\\_docs/LegalSystem.pdf](http://www.autismspeaks.org/docs/family_services_docs/LegalSystem.pdf)
- **Autism and Crime: Should Autistic Individuals Be Afforded The Use of An "Autism" Defense?**, Heather A. Strickland, [http://www.udclawreview.com/wp-content/uploads/2013/02/Autism-and-Crime\\_Final-2-2.pdf](http://www.udclawreview.com/wp-content/uploads/2013/02/Autism-and-Crime_Final-2-2.pdf)
- **Asperger's Syndrome and the Criminal Law: The Special Case of Child Pornography**, by Mark Mahoney, Esq. <http://www.harringtonmahoney.com/documents/Aspergers%20Syndrome%20and%20the%20Criminal%20Law%20v26.pdf>
- **Emerging Perspectives on Adolescents and Young Adults With High Functioning Autism Spectrum Disorders, Violence, and Criminal Law**, by Mathew D. Lerner, MA, Omar Sultan Haque, MD MTS, et al, <http://www.jaapl.org/content/40/2/177.full.pdf+html>

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## Resources

- Autism Society of America: <http://www.autism-society.org/>
- Autism Speaks: <http://www.autismspeaks.org/>
- Autism Society of Wisconsin: <http://www.asw4autism.org/>

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