

Asperger Syndrome in the Criminal Justice System

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Modified and Reformatted for an AS Population by Nomi Kaim

Recent statistics suggest that as many as 1 in 99 people may have an Autism Spectrum Disorder (ASD). The criminal justice system (CJS) may have contact with individuals with ASDs as victims, witnesses, and/or offenders. All criminal justice professionals who have contact with individuals with ASDs will need to establish clear and consistent communication methods, verify facts, make appropriate accommodations, and ensure fair justice and consequences for all concerned. Communications, behaviors, intent, and ability levels of people with ASDs vary greatly and present challenges for even the most experienced criminal justice professionals. Attorneys and judges must avoid misinterpretation of behaviors and characteristics typical of those with ASDs since these behaviors and characteristics could be misinterpreted as evidence of guilt, indifference, or lack of remorse. This article focuses on a specific subset of the ASD population: people with Asperger Syndrome.

What Is Asperger Syndrome?

Asperger Syndrome (AS) is a neuro-developmental disability, meaning that it involves the brain and starts very early in life when the brain is still forming, still plastic, and still changeable. AS describes those people with ASDs who are high-functioning, verbal, may pursue higher education/careers/marriage, and live semi- or fully independent lives. AS involves differences and difficulties in several areas: social interaction; communication; the presence of narrow, repetitive behaviors; and difficulty adjusting to change. General intelligence is not affected; indeed, **the IQs of individuals with AS can range from normal (100 or so) to very superior (above 150)**. AS may occur more frequently in males than in females—diagnosis is at about a four-to-one ratio.

Asperger Syndrome Victims

As crime victims rather than criminal offenders, individuals with AS present the perfect victim. People with AS reveal great difficulty in communicating details and experiences of their victimization, thus resulting in a lack of credibility in interview and court room situations. This reality creates major issues regarding time and resource considerations for investigators and attorneys. Investigators and attorneys should consider the following accommodations and guidelines in preparation for the victim-witness interview of a person with AS:

- Interview a parent, other family member, friend, or the person who first heard the disclosure of victimization.
- With the help of those who know the person, determine the person's communication strengths and deficits.
- Investigate the possibility of multiple victims by interviewing all people with whom the perpetrator had contact.
- Review all records of assessment.
- Interview parents or people who know the individual with AS to determine how he or she best receives and provides information.
- Consider videotaping all interviews.
- Plan questioning based on the person's communication ability.
- Use person's first name.

- Speak to adults as adults, children as children.
- Use simple, direct language.
- Deal with one issue at a time.
- Have the individual re-create events in his or her own words—a narrative interview.
- Make sure both your word choice and the individual’s word choice have the same meaning to each person.
- Make sure all individuals understand to whom a pronoun refers when using pronouns.
- Ensure question is short, direct, and concise.
- Utilize maximum patience, as formulating answers takes longer for individuals with AS.
- Determine the person’s ability to tell the truth.
- Take frequent breaks; person may have short attention span.
- Be alert to non-verbal cues indicating the person is confused or does not agree to your statements or questions. Get confirmation through direct questions.

Currently, no statistics have been developed about the rate of contacts people with AS have with the criminal justice system, although research indicates that people with AS and other developmental disabilities will have up to seven times more contacts with law enforcement during their lifetimes than members of the general population. However, there is no evidence to suggest that people with AS commit crimes at a higher rate than the general population.

Asperger Syndrome Offenders

People with AS often get into trouble without even realizing they have committed an offense. Offenses such as making threatening statements; personal, telephone, or internet stalking; inappropriate sexual advances; downloading child pornography; accomplice crime with false friends; and making physical outbursts at school or in the community would certainly strike most of society as offenses which demand some sort of punishment. This assumption, though valid at face value, may not take into account the particular issues that challenge the AS individual. Problems with sensory overload, poor social awareness, semantic misunderstandings, inability to deal with changes in routine or structure, and limited to absent understanding of non-verbal communications are the very kinds of things that make more appropriate responses to society very difficult for someone with AS.

For example, what appears as anti-social behavior to the “regular” world is often simply the manifestation of the AS person’s social misunderstandings. While most would see too many phone calls in the middle of the night as aberrant phone stalking, the AS person might well view the situation as one friend wanting to talk to another, without regard for the time or frequency of calls. And a physical outburst at school might well be related to the AS person’s sensory dysfunction, inability to deal with interruptions in the daily routine, or emotional lability. Emotional lability means to be susceptible to change, error, or instability and stems from its Latin roots meaning “prone to slip.” This often presents itself in individuals with AS: their emotions can change very quickly. They can become upset, scared, or anxious very quickly. They may also be very anxious one minute and then calm the next, or vice versa. So, while the individual with AS may have

committed the offense in question, the criminal behavior might have been an act of emotional impulsivity, with no intent to do harm.

AS offenders often appear “normal” and be more able academically and vocationally and more independent than people with classical or low-functioning autism. Yet, these strengths can mask social and communication deficits that go unseen or are misunderstood by those with whom they have contact. Their communication difficulties include hardships in making sense of the verbal and body language of others. Their difficulty in maintaining eye contact or insistence on changing the subject of conversation to a topic of their choice—all typical diagnostic behaviors of a person with AS—can mislead an investigator, attorney, or judge. Criminal justice professionals may see someone who seems to lack respect and observe a “rude,” “fidgety” and “belligerent” person who, by nature of his or her lack of eye contact and evasive conversational style, appears to have something to hide. Standard interrogation techniques that utilize trickery and deceit can confuse the concrete-thinking person with AS into producing a misleading statement or false confession. He/she can be overly influenced by the “friendly” interrogator. Isolated and in a never-ending search for friends, the person with AS can easily be led into saying whatever his/her “new friend” wants to hear.

What are AS dilemmas for prosecutors, defense attorneys, probation officers and judges? Left unexplained, the person’s courtroom displays of laughing or giggling, loud vocal tone, and aloof body language—also inherent to the condition of AS— could lead many judges to conclude that this is, indeed, a guilty and remorseless person. Everything in the suspect’s demeanor says so. The person may very well have no idea of the effect his/her behavior is having on a judge, jury, or even his/her own defense attorney. Even the best defense attorney might see guilt in his/her client’s display of behaviors.

Upon initial contact, during questioning, or in a courtroom setting, a person with AS might also display these additional behaviors and characteristics:

- An inability to quickly process and respond to requests, commands and questions.
- Be a poor listener; not seem to care about what you have to say.
- Be unable to deduce what others are thinking and why they are thinking it.
- Make statements that seem tactless or brutally honest. If you are overweight, bald or smell of smoke or perfume, they may bluntly remind you.
- Have difficulty understanding slang terms, innuendo, colloquialisms, figures of speech or jokes. Ask “What’s up your sleeve?” and the concrete answer may be, “My arm.”
- Not notice or have difficulty interpreting communications such as rolling of eyes, raised eyebrows and other non-verbal signals of frustration or disbelief.

Situations can arise for AS individuals where their logic does not work or where their ability to integrate different sources of information is limited. Even when it may seem to you that your question is clear, misinterpretations can occur. They have trouble conceptualizing, putting together information in complicated situations. They are a little bit narrower—engaging in narrow, perseverative conversations and behaviors. So they have trouble with context and with figuring out how things get connected and what they mean. It is just not what they are good at. They look at a single situation; they look at it concretely and don’t always look at it in the context of trying to figure out what would be the different connections to that situation. This can impact legal situations with which you may be involved. One typical criterion is: What would a normal person do in this

situation? But people with AS are not necessarily normal in the way that they process the information and put together the different parts. Thus, that standard may need to be modified a bit in order to understand them. What is a person who thinks like this expected to be able to do? And what might they not be expected to be able to do? All of this needs to be considered.

Probably the simplest thing professionals can do to be helpful to those with AS is to speak slowly and clearly. Individuals with AS may process information more slowly than typical people of the same intelligence level and experience. Another helpful tool is to always have a pen and paper available. If in doubt, write it down. If they are in doubt, let them write it down. Their visual skills are sometimes considerably stronger than their auditory skills, and reading it over will give them more time to process what you have said.

Individuals with AS are a concrete group; therefore, criminal justice professionals must not mistake their concrete responses for making a wise-crack. A teenager with AS was asked by a questioner who knew he had recently turned fifteen, "How old are you?" The teen replied, "Fifteen." The questioner then asked, "When was that?" "On my birthday," he replied. Somebody could take this type of response as a wise-crack, because most people would understand what the questioner meant. However, often people with AS have trouble with the context, connotation, and/or meaning of language. For this reason, professionals must be very direct and very concrete in their language choice when interacting with AS individuals, and they must never rush to judgment concerning the responses of people with AS. Frequently, responses seem to be disrespectful, "smart alecky" or off topic, but this behavior is normal for AS.

Weak communication abilities may mask much higher intelligence levels in people with AS. When uncertain of what they are being asked or how to answer, they may finally just say, "Yes." They have learned that an affirmative answer can get them out of a difficult situation. Thus, in interview settings, pushing too hard or too intensely for answers may generate affirmative answers from individuals with AS which do not necessarily reflect the truth.

People with AS have reported that it is very hard for them to concentrate and understand what others are saying when looking them in the eye. Many people in society see this as rude behavior. A judge or attorney who asks questions and then observes that the person with AS is looking off into the distance may assume this reflects a lack of respect. In reality, this is normal behavior for the individual. When interviewed, one young man with AS made the point: "I keep telling people, 'I'm looking at you. I'm looking at you. I'm looking at you! I don't understand a word that you're saying, but I'm looking at you.'" And some people with AS have actually said, "You can have your choice with me. You can have me look at you, or you can have me understand what you're saying. I can't do both."

Interview/Interrogation Techniques

So, what can the criminal justice professional do to prepare for interactions with people with AS? Try to avoid jumping to conclusions or making attributions based on unusual behaviors. Remember that AS is a social impairment. A component of the social impairment is that many of the things individuals with AS do appear impolite or disrespectful. Criminal justice professionals who interact with and question people with AS will enjoy the best opportunity for success by incorporating the following strategies:

- Approach in a quiet, non-threatening manner.
- Talk calmly in a moderate voice.
- Do not interpret limited eye contact as deceit or disrespect.
- Avoid metaphorical questions that cause confusion when taken literally, e.g., “Are you pulling my leg?” “Cat got your tongue?” “What’s up your sleeve?” “Spread eagle” or “You think that’s cool?”
- Stand or sit calmly and avoid using body language. People with AS may misinterpret body language as threatening.
- Understand that you may need to repeat and rephrase questions.
- Understand that communications will take longer to establish.
- Use simple and direct instructions and allow for delayed responses to questions, directions, and commands.
- Seek assistance from objective professionals familiar with AS.

The interviewer should develop a plan of action that incorporates patience and persistence on his or her part. The interviewer is interacting with somebody who might not always get the message, question, or concept straight. Much patience is necessary because impatience will make them very anxious. Usually they really do want to please; they just don’t know how to do that all the time. But they can sometimes tell if they’re doing it successfully or not. Therefore, practice patience in all situations when dealing with individuals with AS. Interviewers must understand that they will not necessarily get the answer the first time or during one modality of questioning because of the individual’s altered understanding of the context, and their questioning speed and pacing will probably affect that understanding. People with AS are inconsistent processors. So, they might understand one question perfectly well and then not understand the next question at all. Sometimes interviewers may have to write something down or draw it out and let the person with AS look at it. The key is to be patient so you don’t get them emotionally aroused and upset. Being supportive and continuing to try different methods of communication will help the person with AS to answer in a way that can be understood and makes sense to all involved parties.

Environmental Accommodations

People with AS may have more difficulty in that they are over-stimulated by the sensory environment—sights and sounds and smells and touch. Noises are louder for them. Normal background noise that may seem negligible to the average person can be completely overwhelming or overpowering to this population. When this occurs, not only can they not hear what people are asking them, but they can sometimes become very anxious and even terrorized by the situation or by the noise.

Additionally, lights are often brighter for those with AS. For example, when a person with AS is outside on a sunny day, the light may be very over-stimulating, causing the person to become upset. For the person with AS, it would be like somebody shining a very, very bright flashlight right in the eye. Therefore, in many environments, the lighting itself causes distress. Intense sensitivity can extend to any of the senses and really interrupt functioning on many levels. Many very, very capable people with AS will score high on an IQ test but can have horrible school records. The common noise, disruption, and movement in a typical classroom in a typical school can be so disruptive, annoying, upsetting, and distracting that they cannot focus on that one thing in the classroom on which they are supposed to focusing—which is the teacher, or maybe an assignment. The

same situation may exist in a courtroom or interview room. As a result, adjustments in the environment can be crucial to a successful interview. Consider making accommodations to the sensory environment when interacting with a victim, witness, or offender who has AS. Keep lighting low; use subdued colors; limit distracting images or pictures; eliminate the presence of non-essential personnel; avoid using perfume, aftershave, or scented soaps; and avoid touching the person with AS.

Sentencing Considerations

In those cases where it has become clear that the person has committed the crime and qualifies for a diversion or probation program, the offender may be further stymied by his or her AS. Traditional options might include group therapy with other offenders. Meeting with strangers, holding group discussions about personal feelings, sharing personal information, and contributing comments about others will be difficult conditions for the person AS to meet. Corrections professionals can find success with the AS population when they create diversion or probation programs that:

- Use language and terms the person will understand.
- Avoid the use of technical terms.
- Involve people the individual knows and trusts.
- Describe (use photographs) beforehand the people the individual will work with and venues in which they will meet.
- Assure the individual that the new people are safe.
- Utilize the individual's strong rote memory skills.
- Teach the rules of the program with visual aids, such as pictures.
- Create a chronological list of the program; develop a poster with bullet points.
- Discover what is important to the person with AS. Avoid trying to make him or her fit in with what is important to you.

If an individual with AS is taken into custody, alert jail authorities. This person may be at risk in the general jail population. For short-term custody, consider segregation, monitoring, and a professional medical and development evaluation. Incarceration will be fraught with risk for the person and anyone in contact with him or her. The direct manner, offbeat behaviors, and other characteristics of the person with AS may be read by other inmates as an invitation to exploit and control. Corrections professionals may see a rude, incorrigible person. Good behavior privileges will be hard to earn. Corrections professionals who work with the incarcerated AS population will benefit greatly from a comprehensive training—or at the least a good briefing—and access to ongoing assistance from a professional who is familiar with AS.

Conclusion

Some people have described AS as a culture. Consider the need for a translator when dealing with a person who speaks little or no English. Working with someone with AS is analogous to that situation in that successful communication may be blocked, but is not as easily overcome. AS as a culture is an analogy that emphasizes the very different ways in which the affected person processes information and understands things—very much as people from different cultures view things differently. We are obligated by profession to understand that those cultural differences may loom larger in a person with AS than most cultural differences stemming from language, tradition, or history. The cultural differences of AS come from the way the brain works. They are differences in

understanding and perception. Our role becomes the role of translator. The quality of our translation is dependent upon our resourcefulness, knowledge of AS, patience, and understanding. We can and must meet the challenges of this increasingly visible population by embracing our roles in the process.

Consider utilizing as a resource an objective AS professional who can act as a “friend of the court.” This person could help interpret the behaviors and communications of people with AS. This expert could help people understand what the person with AS understands. He or she could also advise about the impact of some of the language or approaches the questioner is using. Each case will be different, each fact pattern is different, and the ability of people with AS to form intent and to control actions certainly differs from one individual to the next. All concerned parties should consider choosing an expert who can both interpret and testify in court if needed. There are so many things in life that people with AS can misunderstand, even when they are trying hard and doing their best. The world is just complicated for them.

[Back to Top](#)