

Prosecutor's Guide for Crimes Involving Victims with Disabilities

February 2020



**Adult Advocacy
Centers**



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Chapter 1: Introduction to Victims with Disabilities

Purpose and Acknowledgements

This guide was created to assist Ohio’s prosecutors as they prosecute cases involving crime victims with disabilities. These cases pose difficult and complex challenges, and this guide aims to simplify the issues using references, case law, practical advice and tactics.

The Adult Advocacy Centers (AACs) would like to thank Advocacy and Protective Services Inc. (APSI), Disability Rights Ohio (DRO), Modell Consulting Group LLC, the Ohio Department of Developmental Disabilities (DODD), the Ohio Department of Mental Health and Addiction Services (OhioMHAS), the Ohio Victim Witness Association (OVWA), the Stark County Board of Developmental Disabilities and the Stark County Prosecutor’s Office for their help in developing this publication.

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Agency Reference Guide

Below is a chart that includes agencies that may be able to assist prosecutors when a crime involves a victim with a disability.

Agency	Link
Adult Advocacy Centers	adultadvocacycenters.org
Area Agency on Aging	ohioaging.org/area-agencies
Disability Rights Ohio	disabilityrightsohio.org/contact
Ohio Association of County Boards of Developmental Disabilities	oacbdd.org/main/member-directory
Ohio Department of Aging	aging.ohio.gov
Ohio Department of Developmental Disabilities	dodd.ohio.gov
Ohio Department of Health	odh.ohio.gov
Ohio Department of Mental Health and Addiction Services	mha.ohio.gov
Ohio Victim Witness Association	ovwa.org

Disclaimer

The contributors to the prosecutor’s guide, including the AACs, cannot guarantee the accuracy of the referenced information, websites or statements. The information provided is accurate at the time of publication, but it is subject to change. Prosecutors and other users of this guide are encouraged to contact the AACs to contribute information or to report inaccuracies. It is the goal of the AACs to continually update materials with the expertise of those in the field.

Definitions and Types of Disabilities

To be protected by the Americans with Disabilities Act, a person must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. More specific definitions are listed below.

Developmental Disability

Examples of a developmental disability include, but are not limited to, cerebral palsy, spina bifida, hearing loss and fetal alcohol syndrome. The Ohio Revised Code (ORC) §5123.01(Q) defines a developmental disability as a severe, chronic disability that is characterized by the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness, as defined in division (A) of section 5122.01 of the Revised Code.

(2) It is manifested before age twenty-two.

(3) It is likely to continue indefinitely.

(4)(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

Dual Diagnosis

Dual diagnosis is a term applied to the co-existence of intellectual or developmental disabilities and a mental health diagnosis. The types of psychiatric disorders a person with intellectual or developmental disabilities experience are the same as those in the general population, although an individual's life circumstances or level of intellectual function may alter the appearance of the symptoms. Persons with a dual diagnosis can be found at all levels of intellectual and adaptive functioning. Some common mental health diagnoses include: depression, bipolar disorder, anxiety disorders, obsessive-compulsive disorder, post traumatic stress disorder, psychotic disorder, schizophrenia, schizoaffective disorder, personality disorders, substance abuse, sleep disorders and eating disorders.

Intellectual Disability

ORC §5123.01(N) defines intellectual disability as a disability characterized by having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.

Mental Illness

ORC §5119(A)(15) defines mental illness as a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgement, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

Older Adults

An older adult is defined in ORC §2913.01CC as a person who is 65 years of age or older. Many older adults develop disabilities as they age. For the purposes of this prosecutor's guide, the term "victims of crime with disabilities" includes these older adults with disabilities.

Physical Disability

A physical disability is a condition that affects a person's mobility, physical capacity, stamina or dexterity. Examples of a physical disability include a brain or spinal cord injury, amputation or arthritis.

Sensory Impairment

Sensory impairments affect one or more senses. Sensory impairments may affect how a person gathers information because a reduction or loss of one or more senses may result in communication difficulties. Examples of a sensory impairment include blindness, sensory processing disorder, hearing impairment or loss, macular degeneration and nystagmus.

Crime Statistics for Victims with Disabilities

The rate of violent victimization against people with disabilities was more than twice the rate for those without disabilities from 2010 to 2014. The rate of serious violent crime (rape or sexual assault, robbery, and aggravated assault) for persons with disabilities was more than three times the rate for persons without disabilities.¹

Multiple studies have shown that individuals with serious mental illness are especially vulnerable to being victimized. A National Crime Victimization Survey interviewed 936 patients with chronic and severe mental illnesses. Among them, more than one quarter had been victims of a violent crime in the past year, a rate more than 11 times higher than the general population.²

Studies demonstrate that people with intellectual disabilities experience the highest risk of violent victimization.³ One study found that more than 70% of women with developmental disabilities are sexually assaulted in their lifetimes, which represents a 50% higher rate than the rest of the population.⁴

More than 12.4% of the U.S. population is age 65 and older. Elder abuse affects an estimated 5 million people each year. Compared with non-abused peers, elder abuse victims are three times more likely to die prematurely, three times more likely to be hospitalized and four times more likely to be admitted to a nursing home. Studies estimate that roughly half of people with dementia are abused or neglected by caregivers.⁵

To compound this injustice, statistics also indicate that crimes against people with disabilities are prosecuted at lower rates compared to those committed against people without disabilities. Nineteen percent of people with disabilities stated that they did not report their victimization because they did not believe the police would help.⁶

Criminal cases should be brought to trial based on the amount and quality of evidence and the credibility of witnesses and victims; however, a case may be considered more of a risk if the victim or witness has a disability. People with disabilities may be unfairly labeled as unreliable sources, unable to provide information during an investigation, or incapable of testifying in court. Although prosecutors face unique and burdensome challenges in these cases, implementing available strategies, offering needed accommodations and using specific code supporting the prosecution of these types of crimes will ensure that having a disability does not deprive a victim from receiving justice.

1 U.S. Department of Justice, Bureau of Justice Statistics, *Crime Against Persons with Disabilities*, November 2016.

2 Treatment Advocacy Center, *Victimization and Serious Mental Illness*, June 2016.

3 Prevalence of violence committed against persons with disabilities.

4 *Invisible Victims - Violence against Persons with Developmental Disabilities* (2000).

5 The National Center for Victims of Crime. *Elder Abuse*.

6 U.S. Department of Justice, Bureau of Justice Statistics, 2011-2015



Chapter 2: Relevant Law for Cases in Which the Victim Has a Disability

Specific Criminal Code

In addition to standard charges, there are specific protections in Ohio law for crime victims with disabilities. Charges that Ohio prosecutors may want to consider when a victim has a disability are listed below.

Charges Specific to Victims with Disabilities

ORC §2903.10	Definition of a functionally impaired person, caretaker defined
ORC §2903.16	Failing to provide for a functionally impaired person
ORC §2903.33	Patient abuse and neglect in care facilities definitions
ORC §2903.34	Patient abuse or neglect
ORC §2903.341	Patient endangerment

Charge Enhancement When the Victim Has a Disability

ORC §2913.01	Definition of theft and fraud
ORC §2913.02(B)(3)	Theft
ORC §2913.03(D)(4)	Unauthorized use of a vehicle
ORC §2913.04(F)(4)	Unauthorized use of property
ORC §2913.21(D)(4)	Misuse of credit cards

ORC §2913.31(C)(1)(c)	Forgery
ORC §2913.43(B)(3)	Securing writings by deception
ORC §2913.49(I)(3)	Identity fraud

Notice and Testimony Considerations When the Victim Has a Disability

ORC §2930.061	Notice of charges to department of developmental disabilities
ORC §2945.482	Taking testimony of an intellectually disabled person or developmentally disabled person victim - Videotaped Deposition
ORC §2945.491	Taking testimony of an intellectually disabled person or developmentally disabled person victim - Videotaped Testimony

Miscellaneous Statutes Involving Persons with Disabilities

ORC §2905.32(A)(2)	Trafficking in persons
ORC §2907.24(A)(3)(b)	Soliciting - after positive HIV test - driver's license suspension
ORC §2913.61(A)	Finding of value of stolen property as part of verdict
ORC §2927.03	Injure, intimidate, or interfere with fair housing rights

Sentencing When the Victim Has a Disability

ORC §2929.12(B)	<p>The sentencing court shall consider the following as more serious conduct:</p> <ul style="list-style-type: none"> (1) The physical or mental injury suffered by the victim due to the conduct of the offender was exacerbated because of the victim's physical or mental condition (2) The victim suffered serious physical, psychological or economic harm as a result of the offense (4) The offender's occupation obliged the offender to prevent the offense or bring others committing it to justice (6) The offender's relationship with the victim facilitated the offense <p><i>Note - Disability-based prejudice is not specifically included as an aggravating factor</i></p>
ORC §2929.13(B)(1)(b)(vii)	Court has discretion to impose prison for fourth- or fifth-degree felony where offender's professional position facilitated the offense

Victim Rights and Marsy's Law

Victims with disabilities are afforded the same protections and rights as all victims under the Ohio Constitution, Article I, Section 10(a) and ORC Chapter 2930, but there are some things a prosecutor should keep in mind when working with victims with disabilities.

- Prosecutors should communicate directly with the victim, even if the victim has a guardian, unless the victim, by Ohio law or Ohio Rules of Professional Conduct, directs otherwise.
 - Notices and case updates sent to the parents of adult victims with disabilities are not sufficient unless approved by the victim.
- Per ORC §2930.02, if a victim designates a victim representative and informs the prosecutor or court of the designation, prosecutors must direct all notices to the victim representative. Additionally, all rights should be granted to the victim representative. Prosecutors should not refuse to provide information to a properly designated victim representative.
- According to Ohio Rules of Professional Conduct Rule 4.2, if the designated victim representative is an attorney, prosecutors are required to follow the Ohio Rules of Professional Conduct regarding contacting a represented party.

Marsy's Law gives Ohio's crime victims specific constitutional rights in the criminal justice process. These rights are listed below.

- The right to be treated with respect, fairness and dignity throughout the criminal justice process.
- The right to information about the rights and services available to crime victims.
- The right to notification in a timely manner of major proceedings and developments in the case and the right to be notified of all changes to an offender's status.
- The right to be present at court proceedings and provide input to a prosecutor before a deal is struck.
- The right to be heard at pleas or sentence proceedings or any process that may grant an offender's release.
- The right to restitution.



Chapter 3: Special Considerations When the Victim Has a Disability

Culpability

Several cases involving victims with disabilities have not been prosecuted due to a belief that the alleged perpetrator did not have the requisite mental culpability to pursue criminal charges. The lack of prosecution in some of these cases is related to the victim's disability, under the reasoning that because the victim was engaging in undesirable behavior, the alleged perpetrator was justified in taking abusive actions.

Although the mental culpability of the alleged perpetrator is necessary for an act to be considered a crime, the victim's disability should not be included as a factor in this assessment. For example, if a victim's disability includes a diagnosis of autism, which manifests in yelling and self-abusive behavior when stressed, and the alleged perpetrator hits the victim to stop these behaviors, mental culpability should not be called into question. In summary, a victim's disability, or the manifestation of a victim's disability, should not be used to mitigate the mental culpability of an alleged perpetrator. Case law relevant to this issue is listed below.

State v. Grable, 2019-Ohio-4516

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2018 CR 00307. A 2019 appellate case from the 11th District Court of Appeals, State vs. Grable, Case No. 2019-A-0042. Mr. Grable was charged with assault for his conduct with an individual with a disability while employed by a provider agency. Appellant poked the individual, who was lying on a couch, and told him to get up. Several times, the appellant pulled a blanket off the individual and the individual pulled the blanket back. The appellant tossed the blanket on the floor and the individual kicked the appellant. The appellant struck the individual several times with an open hand on the individual's arms and legs. The appellant grabbed the individual by his ankles and pulled him off the couch.

The appellant pressed his body weight against the individual and struck him with an open hand on the individual's upper arm and legs, grabbed the individual by the ankles, and dragged him into his bedroom. Appellant was indicted on one count of assault, in violation of R.C. 2903.13(A)(C)(2), a felony of the fourth degree and one count of assault, in violation of R.C. 2903.13(A), a misdemeanor of the first degree. Appellant pleaded not guilty and the matter proceeded to a jury trial. Appellant was later found guilty on both counts of assault and was sentenced to a two-year term of community control. The 11th District Court of Appeals affirmed the judgement of the Ashtabula County Court of Common Pleas. The decision was issued on November 4, 2019.

In these situations, it is recommended that prosecutors analyze the case as they would for any other victim and determine whether the alleged perpetrator engaged in behavior that was against the law. Degrees of culpability attached to mental states are defined in ORC §2901.22.

Discovery Requests

Many victims with disabilities are subject to unreasonable requests for information, such as a request for their entire mental health or medical record. Such requests seek privileged and sensitive information that can deter a victim with a disability from moving forward with a criminal case because they do not want to risk being stigmatized or traumatized.

In particular, psychological evaluations of crime victims cannot be compelled to determine competency. Prosecutors should advocate for the victim's privacy to be maintained and encourage courts to follow the appropriate procedures before disclosing the victim's mental health and medical information. Specific guidance regarding these types of requests are listed below.

- Victims have the right to refuse an interview, deposition or other discovery request made by the defendant.
 - **Relevant Law:** *Ohio Constitution Article I, Section 10a(A)(6); Crim.R. 16(L)(4) (victim has a right to object to pretrial disclosure).*
- Victims' medical records are protected by state and federal privacy statutes.
 - **Relevant Law:** *Crim.R. 16(J); 45 C.F.R. 164.512(f)(1)(ii)(B); ORC §2317.02 (disclosure permitted in five specific circumstances).*
- Victims' records are not discoverable material unless they are related to the case or material to the defense.
 - **Relevant Law:** *Crim.R. 16(B); Crim.R. 16(A) (one purpose of the rule is "to protect the well-being of witnesses, victims, and society at large.")*
- In limited circumstances, defendants can request the victim's confidential information be reviewed in camera by a trial court, but they must first establish a basis for the claim that the documents contain evidence material to the defense.
 - **Relevant Law:** *State v. Lawson, 64 Ohio St.3d 336, 595 N.E.2d 902 (1992) (declined to hold that "due process requires the trial judge to conduct an in camera inspection to determine whether material held by the prosecution contains exculpatory evidence"); State v. Sanders, 92 Ohio St.3d 245, 750 N.E.2d 90 (2001) (must first establish a basis for the claim that material evidence is included, must make a specific request and present facts to support it).*

- Many requests for information from the victim are improperly made pursuant to Criminal Rule 16, requesting that the prosecutor obtain and provide the information sought. These requests should be made in accordance with Crim.R. 17, which requires a subpoena and would allow the victim to object. Prosecutors should encourage defense attorneys to utilize the proper procedures so that victims retain their right to refuse or object to improper discovery requests.
 - **Relevant Law:** *Ohio Const. Article 1, Section 10a(6); Crim.R. 16; Crim.R. 17(C).*

Witness Testimony, Guardianship and Competency

Prosecutors may face challenges regarding testimony provided by a victim with a disability and misconceptions that this testimony is not credible or reliable. This myth devalues a crime victim with a disability. Prosecutors should ensure that witness credibility is not confused with competency. Unlike questions of competency, questions regarding a witness's credibility does not prevent the witness from testifying, are subject to cross-examination, and are decided by a fact finder.

As witnesses are presumed to be competent, it is the trial judge's responsibility to determine the competency of witnesses on a case-by-case basis if the court has a reason to believe that the witness's competency is at issue. A court's decision to allow a witness to testify will be upheld unless there is an abuse of discretion. Previously, there were many grounds for incompetency, including tender age, old age, infirmity of mind, lack of religious belief, having been convicted of a crime or having an interest in the outcome of the case. These historical standards are no longer true. Case law relevant to providing testimony, guardianship and competency is listed below.

State v. Wildman, 145 Ohio St. 379, 61 N.E.2d 790 (1945)

"A person who is able to correctly state matters which have come within his perception, with respect to the issues involved, and appreciates and understands the nature and obligation of an oath is a competent witness, notwithstanding some unsoundness of mind."

State v. Bradley, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989)

Finding that the trial court did not abuse its discretion by determining a witness who was previously declared incompetent in probate court was competent to testify after inquiry by the court. The trial judge questioned the witness in chambers and believed the witness to be competent. The trial judge evaluated the witness' ability to perceive the events in question and his ability to understand the oath to which he was swearing. The appellate court said that the trial judge is in the best position to view and hear a witness and, as such, is in the best position to determine the witness' understanding of events in question and is given wide discretion in determining competence. The Appellate Court also stated that "showing a witness to be of unsound mind in some areas does not automatically render him incompetent to testify."

State v. Jackson, No. 79871 (Ohio Ct. App. May. 2, 2002)

The victim was diagnosed with schizophrenia and had a legal guardian. In an appeal, the defendant argued that the victim was not competent to testify because of his diagnosis. In addition, the defendant contended that since the victim had a legal guardian, he must have been determined to be incompetent by another court. The court disagreed. The determination of a witness

competency is within the “sound discretion” of the trial court, and the defense counsel did not request a competency hearing. Therefore, they waived it. Although the victim testified that he was diagnosed with schizophrenia, the court found that there was no prima facie evidence of incompetence.

Perpetrator Tactics⁷

It is important for the prosecutor to explore the relationship dynamics between a victim with a disability and the alleged perpetrator. Grooming is a predatory tactic used to manipulate and exploit another person. An alleged perpetrator may play upon a person’s need for services and care to gain trust and loyalty. The typical stages of grooming are listed below.

Stage 1: Targeting the victim by evaluating the person’s vulnerability

Stage 2: Filling a need

Stage 3: Isolating the person

Stage 4: Maintaining control of the person

Below are examples of rationalizations that may be used to minimize or deny a crime perpetrated against a person with a disability.

Physical Abuse

- It was self-defense.
- The victim fell.
- It was an accident.
- The injury was self-inflicted.
- The injury was caused by a medical condition.

Sexual Abuse

- Consent was provided.
- The victim misinterpreted needed personal care as sexual abuse.

Neglect

- There was insufficient staff.
- It was not my responsibility.
- The victim refused care.

Victims with disabilities may be reluctant to disclose incidents of abuse. This reluctance may stem from threats of harm by a perpetrator, a reliance on support services, a perception of powerlessness, fear of retaliation, potential loss of housing and institutionalization and possible harm to the victim’s service animal. Understanding the tactics of a perpetrator, accompa-

⁷ Illinois Criminal Justice Information Authority, Protocol for Prosecutors, 2016

nied by the guidelines listed below, will help a prosecutor when communicating with a victim with a disability.

Reasonable Accommodation

Prosecutors are encouraged to meet with crime victims with disabilities to discuss what accommodations they may need. Providing these accommodations will allow crime victims with disabilities to have full participation in the criminal justice process. For example, a witness who cannot see may be permitted to receive assistance from a service animal to get to the stand. A witness who has anxiety may be permitted to have a trusted person present during their testimony. Some examples of accommodations are listed below.

- Use of sensory items in the courtroom
- Inclusion of interpreters in proceedings
- Use of a communication device
- Communication by pictures
- Answering questions with yes and no responses
- Large print materials
- Drawing instead of speaking
- Braille materials

After establishing a list of needed accommodations, prosecutors should file a motion requesting an order allowing for the accommodation to be made. Such accommodations should not provide undue advantage to the party seeking the accommodation and must not violate the defendant's Sixth Amendment right to confront and cross-examine witnesses. Relevant law supporting the provision of reasonable accommodations is listed below.

- 42 U.S.C. §12132; 28 C.F.R. §35.130; Section 504, 29 U.S.C. §794; 29 C.F.R. §32.4
- 28 C.F.R. §35.160; Section 504, 29 C.F.R. §32.4
- 28 C.F.R. §35.130(a); Section 504, 29 U.S.C. §794

Cultural Competency

Although providing reasonable accommodations will promote inclusive justice for crime victims with disabilities, exercising culture competency is necessary to further reduce inequalities and potential re-traumatization. Cultural competency is an attitude and practice that promotes positive interactions among different cultures. Cultures may include race, ethnicity, disability, religion, social class, LGBTQ+ or an intersection of two or more cultures. Practicing cultural competency marks the path to establishing a respectful and productive relationship between a prosecutor and a victim with a disability.

Because individuals with disabilities are at risk of stigmatization, victims with disabilities may not self-identify as having a disability. Similar to other populations that experience prejudice, discrimination and stereotyping, or solely due to personal preference, the degree to which a person identifies with a disability may vary. For example, many individuals who are Deaf distinguish themselves as a culture rather than having a disability. Deaf culture includes the unique

characteristics found among the population of people who are Deaf. Deaf culture can be viewed as a way of life due to a shared language, values, traditions and social norms.

Regardless of how a victim with a disability self-identifies, the prosecutor should provide information, examples, and explanations for meeting the criteria for legal protections and the array of accommodations available, using culturally competent interactions.

Eliminating Harmful Language

Historically, stigmatizing and derogatory terms such as “afflicted,” “idiot,” “lunatic” and “moron” were used to reference people with disabilities. These offensive labels evoked shame and had dehumanizing and traumatizing affects. Inconceivably, victims with disabilities continue to face prejudice and injustice. The justice system is no exception.

Although Rosa’s Law was effective beginning October 2010 and required the terms “mental retardation” and “mentally retarded” to be stricken from federal records, Ohio continues to have laws on the books that use derogatory language. For example, ORC § 2945.491 uses “mentally retarded.” And although Ohio House Bill 53, which passed 32-0, removed the offensive words “lunatic,” “idiot” and “insane” from state law, it did not change the Ohio Constitution. As a result, the Ohio Constitution, Article 5, Section 6, continues to be entitled “idiots or insane persons.”

These derogatory terms, and any similar terms or language, are not included in the prosecutor’s guide. All language that degrades people with disabilities has been deleted and substituted with correct and appropriate language.



Chapter 4: Prepping Your Case

Trial Preparation

It is advisable for the prosecutor to spend time explaining the procedure for direct and cross examination to a victim with a disability. It is important for the prosecutor to inform the victim that they are not responsible for the outcome of the case. The prosecutor should attempt to address obstacles that a victim with a disability may face when they are preparing to attend court proceedings. Some potential obstacles are listed below.

- Transportation
- Accessibility of the courthouse and courtroom
- Ensuring that the support person of the victim's choice is available
- Matching the time of the testimony to the victim's health, medical and medication needs
- Advising the victim about who may be present in the courtroom
- Providing the victim with information about how the courtroom is set up

Court appearances can be especially difficult for victims with disabilities because they must cope with confronting the perpetrator and navigating an unfamiliar court setting and procedure. It is advisable that the prosecutor schedule ample time with a victim with a disability to accomplish the following goals:

- Talk to the victim about the court process and the time frame for their case
- Ask the victim about their disability and how it affects them
- Prepare the victim for what will be said about them in court

- Provide examples of how the victim’s disability may be discussed in court
- Allow the victim to tour the courtroom
- Show the victim where the prosecutor, the judge and the jury will be when they are testifying
- Check for understanding throughout the meeting

Interpreter Services for Victims who are Hard of Hearing or Deaf

Specific support for the appointment of an interpreter as a reasonable accommodation can be found in ORC §2311.14(A)(1), which states, “whenever because of a hearing, speech or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person.”

If the victim is hard of hearing or Deaf it is suggested that the prosecutor arrange to meet in a room that is well lit, has few visual distractions and is sufficiently spacious to accommodate an interpreter, if needed. If the meeting will be recorded, ensure that the victim and interpreter are in the frame and their language can clearly be seen. As the interpreter will be interpreting legal concepts that may not have an exact sign equivalent, it is suggested that the prosecutor meet with the interpreter prior to the meeting to help the interpreter prepare.

During the meeting with the victim, it is important to maintain eye contact with the victim, not the interpreter, and to refer to the victim in the first person rather than looking at the interpreter and requesting, “Ask her what she did yesterday.”

Pursuant to Rule 82.01 of the Rules of Superintendence for the Courts of Ohio and beginning January 1, 2021, the Supreme Court of Ohio will offer credentialing to sign language interpreters who do not possess a Specialist Certificate: Legal (SC:L). To receive this credential, the sign language interpreter must possess one of the credentials listed below.

- National Interpreter Certification (NIC)
- Certification of Interpretation and Certification of Transliteration (CI/CT)
- Comprehensive Skills Certification (CSC)
- Master Comprehensive Skills Certificate (MCSC)
- Level V Certification (NAD V)
- Level IV Certification (NAD IV)

In some situations, when the victim with a disability is Deaf or hard of hearing, two interpreters may be necessary. A Certified Deaf Interpreter (CDI) is an individual who is Deaf or hard of hearing and has been certified by the Registry of Interpreters for the Deaf. In these situations, the CDI will work with a hearing interpreter in an effort to obtain the best interpretation. Situations that may necessitate the use of a CDI include, but are is not limited to, when the individual uses non-standard signs, has limited communication, or is Deafblind. The Supreme Court of Ohio maintains a roster of court interpreters that includes interpreters with CDI certification. Prosecutors can access this roster, which includes individual contact information, at <https://www.supremecourt.ohio.gov/JCS/interpreterSvcs/certification/rosters/language.pdf>.

Interview and Communication Guidelines

Communication with a victim with a disability is critical. The prosecutor should presume competency and meet with the victim as early in the process as possible. It is important to establish a rapport with the victim and allow the victim to tell their story.

There are several important ways that a prosecutor can prepare for and increase the likelihood of a successful interview with a victim with a disability. Some queries that should be addressed prior to an interview are listed below.

- Find out how the victim's disability may affect the interview and communication process
- Assure that the setting is accessible for the victim
- Structure the interview to optimize the victim's understanding
- Determine if the victim requires an interpreter or uses any adaptive equipment, such as a communication device or hearing aid, and that these devices and any chargers are present
- Inquire if the victim has attention issues and would benefit from shorter meeting times or frequent breaks

It is imperative to keep in mind that victims with disabilities may think abuse is normal and believe that their allegation will not be taken seriously due to past experiences of being ignored or disbelieved. Recommended communication guidelines are listed below.

- Ask the individual if they need an accommodation, such as a quiet space, dimmed lighting or sensory items
- When interviewing an individual who is hard of hearing, face the individual and wait to speak until they are looking at you
- If there is an interpreter present, always speak directly to the victim, not the interpreter
- When interviewing an individual who has a vision impairment, clearly announce your name and the names of others in the room and describe the surroundings
- When interviewing an individual that has language-based disability, wait for the individual to finish speaking and avoid interrupting or finishing the individual's sentences
- When interviewing an individual with an intellectual or developmental disability, the following accommodations are recommended:
 - Allow time for processing information and use plain language
 - Use short sentences and repeat important concepts
 - Ask the individual to repeat information in their own words to ensure understanding
 - Avoid yes or no questions, if possible

Since victims with disabilities typically receive services, it is strongly recommended that individuals who live, work and attend activities with the victim be interviewed regarding the facts of the case. These individuals may include family, friends, significant others, roommates, residential staff, managers, day program workers, case managers and other professionals and non-professionals who interact with the victim or perpetrator.

Information gleaned from a forensic interview, such as Project FIND, can provide valuable facts that will assist the prosecutor when structuring communication when the crime victim has a disability.

Project FIND and the Adult Advocacy Centers

Project FIND is a forensic interview protocol created by the Adult Advocacy Centers in collaboration with national experts and local stakeholders to meet the specific needs of crime victims with disabilities. Project FIND training includes a stringent and mandatory certification process with specifically designed curriculum that trains interviewers to gather information in the most reliable and legally defensible manner.

Agencies that have participated in the Project FIND training include county boards of developmental disabilities, mental health organizations, law enforcement, the Ohio Department of Mental Health and Addiction Services, the Ohio Department of Developmental Disabilities, and other community organizations serving individuals with disabilities. As of the writing of this guide, the AACs are offering Project FIND training free of charge throughout the state of Ohio, thanks to the support of the Ohio Attorney General's office through a VOCA grant.

In addition to providing a forensic interview for crime victims with disabilities, the 10 regional AACs will offer medical exams and evidence-collection by trained forensic nurse examiners. Each center will be universally designed and offer complete accessibility. Multi-Disciplinary Teams (MDTs) will be present at each location and will provide assessments, safety plans, and services that use trauma-informed design. The AACs hope to build partnerships with prosecutors to better serve crime victims with disabilities throughout the state.

Ohio Department of Developmental Disabilities Abuser Registry

The Department of Developmental Disabilities (DODD) maintains an abuser registry, which is an online listing of the names of individuals who cannot work in Ohio as employees in the Developmental Disabilities (DD) system. The abuser registry statute can be found at ORC §5123.50 - ORC §5123.541.

To place a DD employee on the abuser registry, there must be clear and convincing evidence that the employee has committed one of the following offenses:

- (i) Misappropriated property of one or more individuals that has a value, either separately or taken together, of one hundred dollars or more;*
- (ii) Misappropriated property of an individual that is designed to be used as a check, draft, negotiable instrument, credit card, charge card or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine or cash dispensing machine;*
- (iii) Misappropriated prescribed medication of an individual;*
- (iv) Knowingly abused such an individual (abuse can be physical, sexual or verbal);*
- (v) Recklessly abused or neglected such an individual, with resulting physical harm;*
- (vi) Negligently abused or neglected such an individual, with resulting serious physical harm;*
- (vii) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;*
- (viii) Engaged in sexual conduct or had sexual contact with an individual who was not the DD employee's spouse and for whom the DD employee was employed or under a contract to provide care;*
- (ix) Unreasonably failed to make a report pursuant to division (C) of section 5123.61 of the*

Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual;

(x) Been convicted of or entered a plea of guilty to any of the following if the victim of the offense is an individual with a disability: an offense of violence, a violation of a section contained in Chapter 2907. or 2913. of the Revised Code, or a violation of section 2903.16, 2903.34, 2903.341, or 2919.22 of the Revised Code.

Often the DD employee being considered for placement on DODD's abuser registry has been criminally charged. Unless the prosecutor agrees otherwise, DODD must wait until the criminal process is completed. However, if the prosecutor is in agreement, DODD may proceed with the process to place the DD employee on the abuser registry. This agreement, allowing DODD to proceed, is called a prosecutor's waiver. Examples of when these waivers have been granted include when the employee is in diversion, has failed to appear for sentencing, or a warrant has been issued for the DD employee and they are believed to have left the state.

DODD has also created a voluntary consent agreement. Defendants who would qualify for the abuser registry can sign this form to waive their administrative due process rights as it relates to the abuser registry. This process is modeled on the Department of Education's voluntary surrender of a teaching license. The voluntary consent agreement includes the specifics of why DODD is seeking to place the person's name on the abuser registry. Prosecutors can use this consent agreement as part of a plea with the defendant. For certain cases, DODD may request that the prosecutor give the voluntary consent form to the defendant. There may be various reasons for this request, including concerns by the victim that prosecutors might choose not to present the form. Prosecutors may call DODD at 614-995-3810 for more information about the abuser registry.

If a DD employee is placed on the abuser registry, they are barred from being employed to care for individuals with developmental disabilities in Ohio. Because other state agencies require employers to check the abuser registry, placement also prohibits individuals from other types of employment. A list of prohibited employment is listed below.

- Employment by a Medicaid agency
- Owning (5% or more) of an agency
- Having a Medicaid Provider Agreement as a non-agency provider
- Providing ombudsman services or direct care services to anyone enrolled in a program administered by the Ohio Department of Aging
- Employment by a home health agency in a direct care position, which prevents an individual from being hired in a nursing home or residential care facility in a direct care position

The abuser registry is accessible to the public through a link on DODD's website, which can be found at its.prodapps.dodd.ohio.gov/ABR_Default.aspx. A screenshot of DODD's online abuser registry search tool is shown at the top of page 20.

Last 10 MUIs:
 Refresh After Leaving

Welcome to the Ohio Department of Developmental Disabilities Online Abuser Registry Verification. Employers are required to check the Abuser Registry before hiring an applicant, to confirm that they are not on the Registry. Employers should also do an annual check to ensure their employees are not on the Registry.

[\[Click to subscribe\]](#) and receive an email when the Abuser Registry is updated.

1) List of names: To obtain a list of all names on the Abuser Registry, please leave all fields blank and click on "Search Abuser Registry"

2) To complete an online verification, enter the social security number(SSN) and click on "Search Abuser Registry". This is the preferred method to verify whether someone is on the Registry. If you have the SSN of the employee, check by the SSN.

- OR -

Enter at least the first letter of the last name and click on "Search Abuser Registry". Please remember many people have the same last name.

(Use the SSN if you know it.)

[CLICK HERE FOR PRINTABLE VERSION OF CURRENT REGISTRY](#)

SSN:	<input type="text"/>	Last Name:	<input type="text"/>	Today's Date: 2/18/2020	Total # Placed on Registry: 984
Sort By: Last Name ▼	<input type="button" value="Search Abuser Registry"/>	Registry Last Entry: 1/27/2020	Current # on Registry: 980		
			# Removed from Registry: 4		

EMPLOYERS:

IF YOU ARE AN EMPLOYER IN THE DEVELOPMENTALLY DISABLED FIELD AND HAVE AN APPLICANT OR EMPLOYEE WITH A POSITIVE MATCH TO THE REGISTRY, YOU MUST CALL (toll-free)1-866-313-6733 TO ALERT THE DEPARTMENT.

If you need more assistance or information, you can also call the above number.

The Ohio Department of Developmental Disabilities Abuser Registry search tool

Ohio Department of Health Nurse Aide Registry

The Ohio Department of Health (ODH) maintains the Ohio Nurse Aide Registry (NAR). This registry lists over 240,000 State Tested Nurse Aides (STNAs), with more than 88,000 of these STNAs actively working in the field. ODH continually updates the NAR to include new individuals who have met the criteria to be certified as an STNA for employment in long-term care settings, such as nursing homes.

The NAR also maintains records of STNAs who have had a finding of abuse, neglect or misappropriation of property. The Director of ODH has the authority to receive, review, investigate and place individuals on the NAR with a finding under OAC §3701-17-07(A)(1).

When revocations occur, the STNA involved is permanently placed on the NAR with the specific findings. The NAR also tracks non-STNAs that have a finding of neglect, abuse or misappropriation of property. Examples of non-STNAs include, but are not limited to, volunteers, food service workers, maintenance staff and administrators. As of the writing of this prosecutor's guide, there are more than 2,300 individuals listed on the NAR with findings. Out of the 2,300 listed, 644 are not STNAs.

Registry information can be obtained by calling 800-582-5908. Callers may use ODH's automated system or talk directly with a nurse aide registry customer service technician. Registry information can also be accessed online at odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx. A screenshot of ODH's online nurse aide registry search tool is shown at the top of page 21.

Ohio
Department of Health

Nurse Aide Registry

Search by Registry Number	
Registry Number:	<input type="text"/>
* The Registry Number search option requires the full registry number to be entered. The search result will return an exact match.	
- or -	
Search by Last Name AND First Name or last 4 digits of the SSN	
Last Name:	<input type="text"/>
First Name:	<input type="text"/>
SSN (Last 4 Digits):	<input type="text"/>
* The Last Name and First Name or SSN search option allows for partial search values to be entered. The search results will return the closest matches for the values entered.	
<input type="button" value="Search"/>	

The Ohio Department of Health Nurse Aide Registry search tool

Community Partners

In addition to the AACs, prosecutors may gain needed information and assistance by contacting community partners that work with people with disabilities. In particular, it is recommended that prosecutors work with the Ohio Department of Developmental Disabilities and the County Boards of Developmental Disabilities, the Ohio Department of Mental Health and Addiction Services and the Alcohol, Drug and Mental Health Boards, the Ohio Department of Health, the Ohio Department of Aging and regional Adult Protective Services organizations. Brief summaries of these community partners and how their partnership may be beneficial to Ohio's prosecutors are listed below.

The Ohio Department of Developmental Disabilities and the County Boards of Developmental Disabilities

All 88 county boards of developmental disabilities employ Investigative Agents (IAs). IAs complete administrative investigations, called Major Unusual Incidents (MUIs), in response to allegations of abuse, neglect, misappropriation or any other violation as defined as an MUI in the Ohio Administrative Code (OAC). IAs are trained and certified, per ORC 5126.221, and have specific expertise and knowledge on how to work with individuals with disabilities.

IAs conduct interviews, photograph the scene of the incident, identify causes and contributing factors and ensure that a prevention plan is put into place to address the safety needs of the victim. IAs are knowledgeable regarding the service delivery system and are trained to collect evidence and records relevant to allegations of abuse. Specific documentation that is required to be collected, via OAC §5123-17-02, includes, but is not limited to, incident reports, nursing notes, progress reports, interview notes, details regarding the physical environment and evidence, and relevant photographs.

County Boards of Developmental Disabilities may contract with Councils of Governments (COGs) for administrative and investigative tasks. Currently in Ohio there are 8 COGs: Clearwater COG, Mid-East Ohio Regional Council of Government (MEORC), North East Ohio Network (NEON), Northwest Ohio Waiver Administration Council (NOWAC), Southern Ohio Council of Government, Southwest Ohio Council of Government, the Employment Connection of Hocking, Perry and Fairfield Counties (TEC Ohio) and WestCON.

The Ohio Department of Mental Health and Addiction Services and the Alcohol, Drug and Mental Health Boards

OhioMHAS provides services to adults with mental illness at six Regional Psychiatric Hospitals (RPH). Reporting of incidents involving patient abuse and neglect is addressed in OAC §5122-3-13. All reported incidents of patient abuse and neglect in the RPHs are investigated by OhioMHAS special police. When cases include evidence of criminal activity, they are reviewed and referred to investigators at the Ohio State Highway Patrol (OSHP). OhioMHAS police chiefs, as well as OhioMHAS legal counsel, will work directly with prosecutors upon request. In addition, all patients can report allegations of rights violations to the Rights and Recovery Administrators (RRAs) available at each RPH.

Ohio also currently has 50 Alcohol, Drug Addiction and Mental Health (ADAMH) Boards. These boards are statutorily empowered to plan, develop, fund, manage and evaluate community-based mental health and addiction services. ADAMH Boards typically offer support groups, suicide prevention, counseling, advocacy and case management.



Chapter 5: References

Glossary of Common Terms

Accessible: In the case of a facility, readily usable by a particular individual; in the case of a program or activity, presented or provided in a manner that makes it easier for a particular individual to participate, with or without auxiliary aid(s); in the case of electronic resources, accessible with or without assistive technology

Access barriers: Any obstruction that prevents people with disabilities from using standard facilities, equipment and resources

Accommodation: Modifications or adjustments to a program, service or the environment to make it easier for a person with a disability to participate in the same manner as anyone else

Adaptive technology: Hardware or software products that provide access to a computer that is otherwise inaccessible to an individual with a disability

Americans with Disabilities Act of 1990 (ADA): A comprehensive federal law that prohibits discrimination on the basis of disability in employment, public services, public accommodations and services operated by private entities, and telecommunications

Assistive technology: Technology used to assist a person with a disability, e.g., wheelchair, hand splints or computer-based equipment

Braille: System of embossed characters formed by using a Braille cell, a combination of six dots consisting of two vertical columns of three dots each. Each simple Braille character is

formed by one or more of these dots and occupies a full cell or space. Some Braille may use eight dots.

Captioning: Text that is included with video presentations or broadcasts that enables people who are hard of hearing to have access to the audio portion of the material

Communication device: Hardware that allows a person who has difficulty speaking clearly to use words or symbols for communication. May range in complexity from a simple picture board to complex electronic devices that allow personalized, unique constructions of ideas.

Deaf or hard of hearing: Complete or partial loss of the ability to hear caused by a variety of injuries or diseases, including congenital defects

Disability: Physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment (Americans with Disabilities Act of 1990)

Discrimination: Act of treating someone differently on a basis other than individual merit

Forensic interview: An interview conducted by a trained forensic interviewer that gathers factual information from a victim using non-leading questions in a legally defensible and developmentally appropriate manner. Project FIND is a new forensic interview protocol that was designed specifically for crime victims with disabilities.

Identity-first language: A language construct that puts a person's disability label first, such as in "disabled woman" or "Autistic man." A person may prefer identity-first language because they believe their disability is an inherent part of their identity. Some disability communities, including the Deaf, blind and Autistic communities, are more likely to prefer identity-first language. However, as views vary from person to person, it is important to ask each individual what their preference is for identifying language. *See also: Person-first language*

Large print: Most ordinary print is six to 10 points in height (about 1/16 to 1/8 of an inch). Large type is 14 to 18 points (about 1/8 to 1/4 of an inch) and sometimes larger.

Mainstreaming, inclusion: The inclusion of people with disabilities, with or without special accommodations, in programs, activities and facilities with their non-disabled peers.

Major life activities: Functions like caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and participating in community activities (Americans with Disabilities Act of 1990)

Mobility impairment: Disability that affects movement ranging from gross motor skills, such as walking, to fine motor movement involving manipulation of objects by hand

Person-centered planning: A process that focuses on the goals that are important to a person, while emphasizing what they can do rather than what they cannot do. The planning process emphasizes active listening by an individual's team members, with an emphasis on the person acquiring skills they wish to learn, using a multi-disciplinary team model of support.

Person-first language: A language construct that puts the person before their disability label, such as in “woman with Parkinson’s disease” or “man with bipolar disorder.” A person may prefer person-first language because they believe their disability does not define them. As views vary from person to person, is it important to ask each individual what their preference is for identifying language. *See also: Identity-first language*

Physical or mental impairment: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities (Americans with Disabilities Act of 1990).

Qualified individual with a disability: An individual with a disability who, with or without reasonable modification to rules, policies or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity (Americans with Disabilities Act of 1990).

Reader: Volunteer or employee of an individual with a disability (e.g., visual impairment, learning disability) who reads printed material in person or records to audiotape.

Reading system: Hardware and software designed to provide access to printed text for people with visual impairments, mobility impairments or learning disabilities. Character recognition software controls a scanner that takes an image of a printed page, converts it to computer text using recognition software and then reads the text using a synthesized voice

Refreshable Braille display: Hardware connected to a computer that echoes screen text on a box that has cells consisting of pins that move up and down to create Braille characters

Screen enlargement: Hardware or software that increases the size of characters and text on a computer screen

Screen reader: Software used to echo text on a computer screen to audio output, often used by people with visual impairments or learning disabilities

Section 508 of the Rehabilitation Act: Legislation that requires federal agencies to develop, procure and use accessible electronic and information technology

Sensory impairment: A disability that affects touch, sight or hearing

Service animals: Under Titles II and III of the ADA, a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability; under the Air Carrier Access Act, any animal that is individually trained or able to provide assistance to a person with a disability, or any animal that assists persons with disabilities by providing emotional support

Sign language: Manual communication commonly used by Deaf or hard of hearing people. The gestures or symbols in sign language are organized in a linguistic way. Each individual gesture is called a sign, and each sign has three distinct parts: the handshape, the position of the hands and the movement of the hands. American Sign Language (ASL) is the most commonly used sign language in the United States. It is different from English. Deaf people from different countries speak different sign languages.

Specific learning disability: Disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in difficulties listening, thinking, speaking, reading, writing, spelling or doing mathematical calculations. Frequent limitations include hyperactivity, distractibility, emotional instability, visual and/or auditory perception difficulties and/or motor limitations, depending on the type(s) of learning disability.

Telecommunications Relay Service (TRS): A nationwide service that allows people who are Deaf or hard of hearing to communicate over the telephone. The service may be provided in a number of different forms, depending upon the needs of the individual, including teletypewriter (TTY), voice carry over, captioned telephone service and video relay service.

Traumatic Brain Injury (TBI): Open and closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital, degenerative or induced by birth trauma.

Trauma-informed: Services, practices, assessments, etc., that incorporate knowledge about trauma, such as prevalence, impact and recovery, in all aspects of service delivery. Trauma-informed practices minimize re-victimization and facilitate recovery.

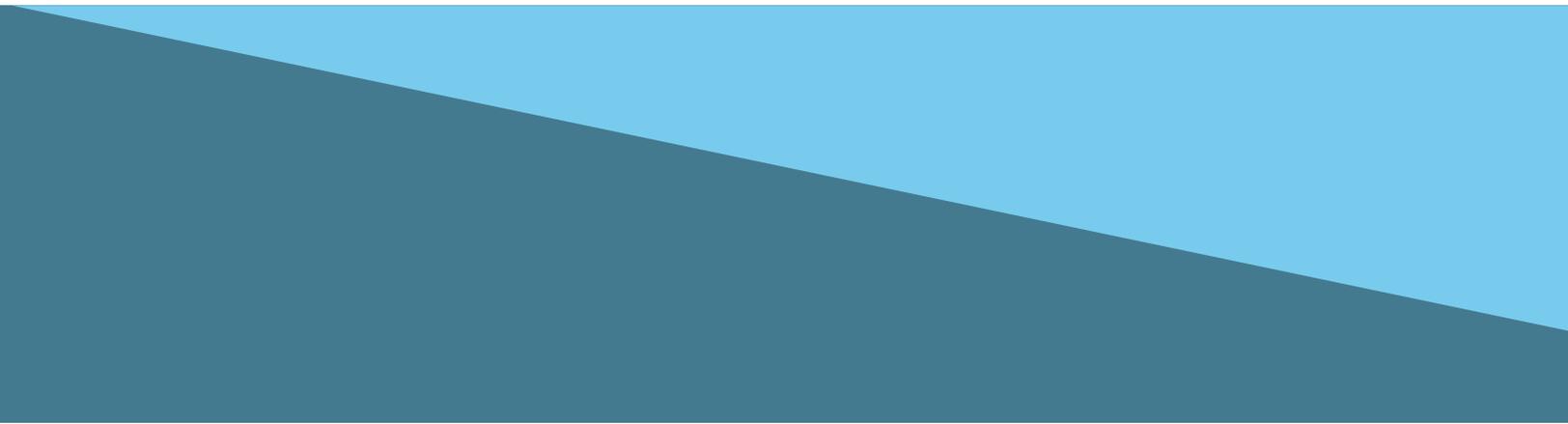
Universal design: Designing programs, services, tools and facilities so that they are useable, without modification, by the widest range of people possible, taking into account a variety of abilities and disabilities

Vision impairments: Complete or partial loss of ability to see, caused by a variety of injuries or diseases, including congenital defects. Legal blindness is defined as visual acuity of 20/200 or less in the better eye with correcting lenses, or the widest diameter of visual field subtending an angular distance no greater than 20 degrees

Vocational Rehabilitation Act of 1973: Legislation prohibiting discrimination on the basis of disability, which applies to any program that receives federal financial support. Section 504 of the Act is aimed at making educational programs and facilities accessible to all students. Section 508 of the Act requires that electronic office equipment purchased through federal procurement meets disability access guidelines.

Additional Resources

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