

Project Shield – Criminal Justice and Community Response to Sexual Assault Victims with Intellectual and Developmental Disabilities



Developed by Project Shield:
A collaboration between the Kings County District Attorney's Office and YAI/National Institute for People with Disabilities. Funded by NYS DCJS STOP program.

Project Shield

- Works to facilitate more effective investigations and prosecutions of sex crimes involving individuals with ID/DD
- Collaborative effort between the Brooklyn District Attorney's Office and YAI/National Institute for People with Disabilities
- Focus on bringing education and awareness to social service and medical providers, members of law enforcement, the community, and individuals with disabilities.

Educational Objectives

- Understand the scope of sexual abuse in persons with ID/DD and the identifying factors that can make this group vulnerable to abuse.
- Learn the complexities of determining sexual consent in persons with ID/DD, and the victims rights to consent to a forensic exam
- Skills in forensic interviewing and communication with individuals with ID/DD. What is the purpose of the pre-arrest interview? Techniques in prosecution.
- Understand the importance of the collaborative response to working with individuals with ID/DD who have been sexually assaulted and how this aids in the prosecution of such cases.

Statistics

- Among adults who are developmentally disabled, as many as 83% of females and 32% of males are victims of sexual assault. Johnson, I., Singler, R. 2000. "Forced Sexual Intercourse Among Intimates," *Journal of Interpersonal Violence*. 15(1)
- More than 90% of individuals with intellectual disabilities will experience sexual victimization at some point in their life. Valenti-Heim, D., Schwartz, L. (1995). *The Sexual Abuse Interview for Those with Developmental Disabilities*. James Stanfield Company. Santa Barbara: California.
- 49% of people with developmental disabilities who are victims of sexual assault will experience 10 or more abusive incidents. Valenti-Heim, D., Schwartz, L. (1995). *The Sexual Abuse Interview for Those with Developmental Disabilities*. James Stanfield Company. Santa Barbara: California.

What is ID/DD?

- Intellectual and other Developmental Disabilities
 - Intellectual Disability
 - Cerebral Palsy
 - Epilepsy
 - Autism
 - Other Neurological Impairments (e.g. Tourette Syndrome)
- Traumatic Brain Injury (TBI)
 - Not technically a DD, but may present similarly

What is ID/DD?

- Diagnosed before the age of 18
- Likely to continue indefinitely
- Must be attributable to a mental or physical impairment or a combination of both
- Results in substantial functional limitations in 3 or more of the following areas:
 - Self care
 - Receptive and expressive language
 - Learning
 - Mobility
 - Self direction
 - Capacity for independent living
 - Economic self sufficiency

Myths Regarding Sexuality/ Relationships & People with ID/DD

- People with ID/DD...
 - Are not sexual beings/Are overly sexual
 - Do not have intimate/romantic relationships
 - Are unable to consent to sex
 - Cannot communicate their thoughts and feelings
 - Are not affected by trauma
 - Must have people make decisions for them, in all aspects of their lives

Vulnerabilities to Abuse

- People with ID/DD have an increased vulnerability to repeated abuse
- Abusers may view people with ID/DD as easy targets or believe that the consequences of abusing persons with ID/DD are less serious
- People with ID/DD are often praised/trained for compliance (i.e. “would you like to get on the bus?” vs. “get on the bus”)
- Issues in identifying dangerous situations
- Physical barriers to prevent leaving a situation/escaping
- Tendency to be very trusting, especially of those perceived to be authority figures or for those to whom they seek approval
- Lack of appropriate/adequate sex education
- Lack of adequate education about basic safety and legal rights

Who is the Abuser?

- Intimate Partners
 - Peers
 - Family
 - Caregivers
 - Stranger assaults
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- 97 to 99% of abusers are known and trusted by the victim who has developmental disabilities. [Baladerian, N. (1991). Sexual abuse of people with developmental disabilities. *Sexuality and Disability*, 9(4), 323-335.]
 - In cases in which people with disabilities have been abused, 33% of abusers are friends or acquaintances, 33% are natural or foster family members, and 25% are caregivers or service providers. [Sobsey, D. (1988) "Sexual Offenses and Disabled Victims: Research and Practical Implications." *Visa Vis*, Vol. 6 NoA.]

When Abuse Occurs... Reporting Sexual Abuse

- Follow local law enforcement reporting procedures and agency protocol
- NYS OPWDD recently changed protocol from reporting within 72 hours to immediate reporting of abuse.
- Reports are often delayed – the sooner to report the better.
- Best to allow law enforcement or SART/SAFE examiners to get full story from victim.

Purpose of the Pre-arrest Interview

- Getting clearest possible information prior to arrest
- Determine what can reasonably be charged in a case based on victims ability to communicate what happened (issues of time, place, occurrence, where was victim abused).
- Victim advocate assists in interview and can help determine if formal sexual consent determination needs to be made by expert.
- Building the strongest case possible

Forensic Interviewing & Effective Communication

- **Be careful not to put words in victims' mouths. Ask questions that are as open-ended as possible to avoid shaping a victim's narrative. Give victims time to answer.**
- Always speak to the victim privately (and in a quiet location) first, even if s/he presents with a family member, staff member, or guardian.
- A person with ID/DD who has experienced trauma may experience a reduced ability to communicate.
- Be aware that the victim may have a history of past abuse.
- Be aware that people with ID/DD may have more pronounced responses to people they perceive as authority figures (desire to please).
- Do not rephrase questions quickly.
 - Allow 10 seconds to respond
- Do not confuse slow response with inability to think or understand.

Forensic Interviewing & Effective Communication

- Explain terms that someone who does not work in your field may not know (e.g., testify, consent, forensic evidence kit, etc.).
- Be aware of the echo effect.
- Remember that a person's level of receptive communication may be different than his/her level of expressive communication.
- Check for understanding by asking "What is one thing you heard me say?" or "What is one thing that you can remember that we talked about?"
- It is important to stop and ask "How are you doing?" and "Do you have any questions?" frequently throughout the interview.
- Other Communication (i.e. sign language, facilitated communication, non-facilitated communication).
- Recognize non-verbal communication
 - Body language
 - Facial expressions
 - Hand gestures

Determining Ability to Consent to Sex

- Concept of informed sexual consent – Knowledge, Voluntariness, Rationality
- Ability to say no and make choices
- Judgement in Daily Situations
- Legal, not psychological concept

New York State Statute

Sexual assault cases are brought primarily under three theories with victims with ID/DD:

- 1) **Forcible Compulsion** - Means to compel by the use of physical force or a threat, express or implied, which places the victim in fear of immediate death or physical injury to himself, herself, or another person, or in fear that he she or another person will immediately be kidnapped

New York State Statute

- 1) Without Consent/“No means no”
 - Circumstances under which, at the time of the act of intercourse, oral sexual conduct, or anal sexual conduct, the victim clearly expressed that he or she did not consent to engaged in such act....
 - Difficult because victims are often coerced or fearful and submit
 - Lesser degree of crime

- 2) Incapacity to consent
 - By virtue of age, Victim less than 17 years old
 - Mentally Disabled
 - Means that the Person Suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct

New York State Statute – Mentally Disabled

- Two requirements:
 - 1) Victim is mentally disabled
 - 2) Because of the victim's mental disability, the victim is *incapable* of giving meaningful consent

*Corroboration Requirement: In addition, the law requires corroboration of the sexual act AND of the identity of the perpetrator

Consenting to a Forensic Exam (Sexual Assault Kit)

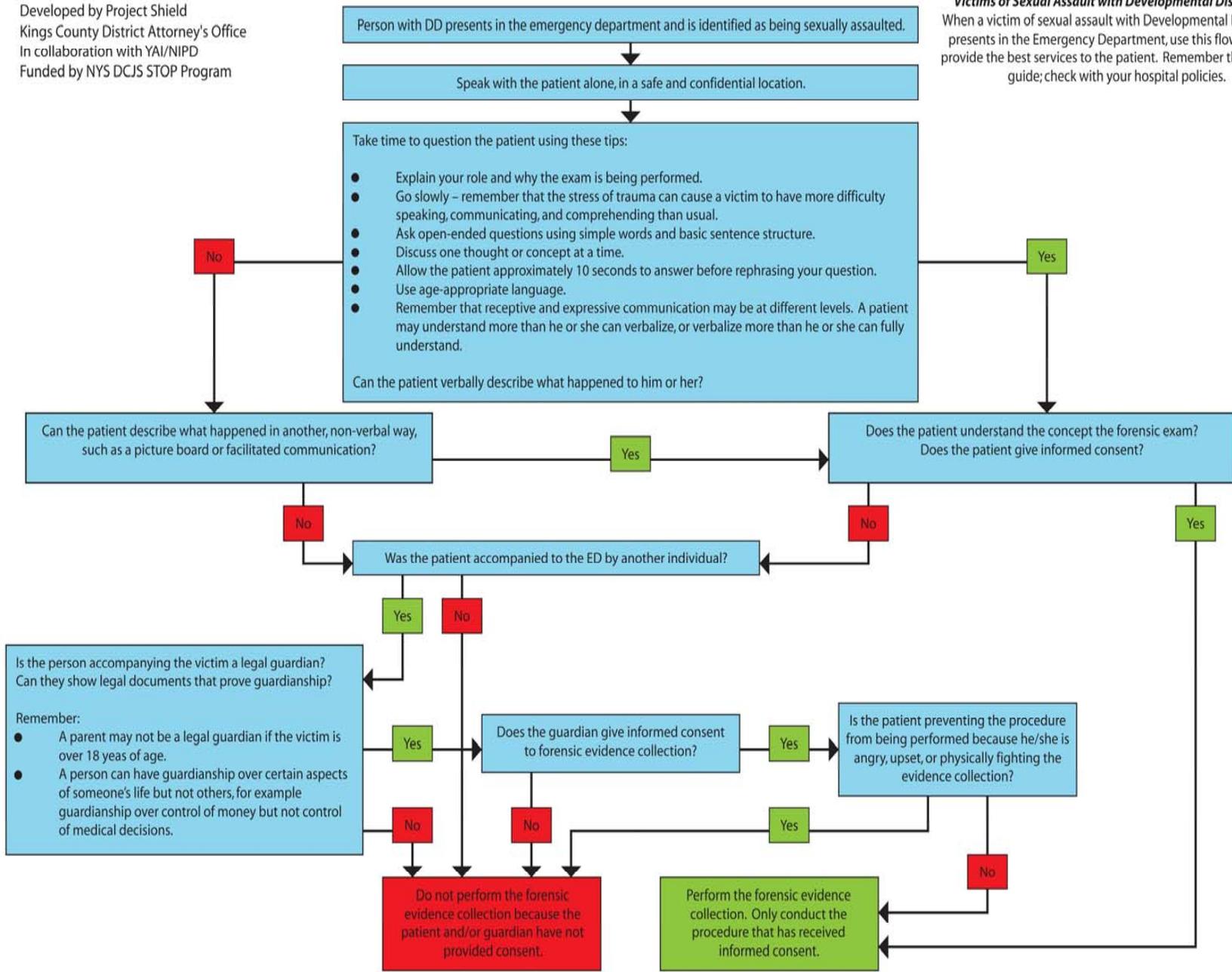
- Difference between medical procedure and forensic exam
- Perform the exam if:
 - The patient has given consent
 - The patient is unable to give consent, but a legal guardian gives consent AND the physician believes that the guardian is looking out for the best interest of the patient
- Do not perform the exam if:
 - The patient understands the procedure and does not give consent
 - The patient is unable to give consent and the guardian does not give consent OR the patient is unable to give consent and the guardian cannot be located
 - The guardian provides consent but the patient physically resists the exam

Victims of Sexual Assault with Developmental Disabilities



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Victims of Sexual Assault with Developmental Disabilities
 When a victim of sexual assault with Developmental Disabilities presents in the Emergency Department, use this flow chart to provide the best services to the patient. Remember that this is a guide; check with your hospital policies.



Issues in Prosecution

- Delayed outcry
- Large gaps in time from occurrence to report to prosecution/trial.
- Lack of forensic evidence (i.e. DNA, documented injury, etc).
- Victim credibility
- Speedy trial limitations and preparing the victim to testify
- Preconceived notions of jurors and the court
- Prejudice

Issues in Prosecution

- **Swearability...**
- Presumptive age of swearability in New York is 9 (the 2001 SARA lowered it from 12).
- The SARA, implemented in NYS in 2001, added definition of understanding the nature of an oath (aka swearability) to the Criminal Procedure Law (subdivision (2) or Section 60.20). Statute states that an individual understands the nature of an oath if s/he:
 - **Appreciates the difference between the truth and falsehood**
 - **The necessity for telling the truth, and**
 - **The fact that a witness, who testifies falsely, may be punished.**

Prosecuting sexual assault cases with victims with ID/DD most effectively...

- Work closely with a counselor
- Guide your victim through the process from start to end
- Gather as much evidence as possible
- Utilize witnesses such as teachers, social workers, therapists or family members
- Prepare your jury for your victim and explore possible prejudices.

Issues in providing following up care to sexual assault victims with ID/DD

- Addressing victim safety
- Crisis intervention services
- Clinical services for individuals with ID/DD who have experienced sexual violence
- Prevention – need for increased awareness of sexual abuse, sexuality education and safety training for persons with ID/DD

Project Shield: Collaboration and Education

- Providing support to victims step-by-step through the criminal justice process, planning for safety and keeping victims informed.
- Providing support to law enforcement and community agencies serving people with ID/DD who have been sexually abused.
- Task force and alliance building with law enforcement, prosecutors, social service, and medical providers.
- Education leads to more informed and thus more successful prosecutions

Questions?

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