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Criminal Justice System

This section of the Family Carer Advocacy Pack is about what to do if your relative becomes involved in the Criminal Justice System (CJS):

- As a suspect
- As a witness
- If a decision is made about a place of safety
- As a victim

and how you can support them as a family carer.



As a suspect

People with a learning disability, autism or both are over-represented in the criminal justice system (CJS).

- Autistic people are 7 times more likely to come into contact with the police than the general population, and 15% of young people in custody are autistic
- Young people with learning disabilities are 10 times more likely to find themselves in custody than their peers without a learning disability, and represent about 30% of people in custody
- It is thought that about 10% of the prison population has a diagnosed learning disability, but around 60% of prisoners (as well as those in custody) have difficulties with communication

Source: Association for Real Change (ARC) 'People with learning disabilities in the CJS: A guide for carers and learning disability services', England 2016

People with a learning disability, autism or both become involved in the CJS for a number of reasons, including:

- Lack of early intervention and skill teaching, e.g. sexual appropriate behaviour
- No formal or a delay in receiving a diagnosis which results in inadequate support, e.g. not meeting the threshold for social services input



[Read the Sexual Behaviour factsheet from the CBF](#)

- Unusual or behaviour described as challenging, which can be misinterpreted by the public and police
- Social naivety. This can mean that people are easily taken advantage of e.g. mate (hate) crime. This term refers to people with a learning disability, autism or both being befriended by people who then exploit (take advantage of) them



[Watch this video clip called Tricky Friends](#) with your relative to help explain what friends should do (and not do)

- Communication difficulties, e.g. not understanding what is being said, what is required of them and how this is interpreted by professionals such as the police
- Suggestibility and acquiescence. This means 'going along with what somebody has said' whether because of a lack of understanding or because your relative thinks that agreeing is the right thing to do. This may lead to a false confession
- More likely to get caught and less likely able to conceal a crime
- Substance misuse
- They do not want to acknowledge or are embarrassed to disclose their learning disability, autism or both

Sometimes people with a learning disability, autism or both become involved in the CJS because support staff (community and hospital services):

- Call the police when they are unable to manage behaviour described as challenging
- Want to take action against the person with a learning disability, autism or both

[Read the full ARC report here](#)

including the policing pathway - from allegation through to prosecution



due to the behaviour described as challenging. Instead of recognising this as communicating an unmet need or a sign of distress they view it as an 'assault'

To reduce the risk of this happening, family carers can:

- Ask services what their policy is at an organisational level. They cannot prevent a member of staff taking action at a personal level
- Liaise with the local police and ask their advice about the potential of this happening
- Make sure that your relative's care and support and/or treatment and positive behaviour support plans contain detailed information about what to do to prevent behaviour described as challenging, early warning signs, triggers for behaviour, types of behaviour, what to do and what might make a behaviour escalate. For example, if your relative's support plan states that all types of touch (including physical restraint) cause an extreme response because of tactile defensiveness (find touch uncomfortable) and should therefore be avoided. If support staff do not follow this guidance, this places accountability with them not your relative

Until a court, following a police investigation, decides a crime has been committed, the offence is only alleged and your relative has the same legal rights to a defence.

If your relative is found guilty of an offence but it is recognised by the CJS that they would be unable to cope with a prison environment, they should be assessed and diverted to another more appropriate service, which may be a mental health service. The identified service should be able to address their care, support and also their offending behaviour needs, e.g. education about appropriate sexual behaviour, recommendations about better community support.

Read Stan's story:

Stan had been told that he might be sentenced to prison. He was therefore relieved when he realised this was not the case. Stan was given a community sentence that involved a curfew between the hours of 6pm and 7am.

Within a week Stan was returned to court for breaking his curfew – he had been playing football with his friends in the local park at 7pm. Stan didn't know what the word 'curfew' meant, and he didn't have a watch because he couldn't tell the time.

Stan was sentenced to prison, where his learning disability was recognised. He was later diverted away from prison into a secure mental health unit. Stan subsequently received support to help him to live independently in the community. He now does voluntary work, which involves giving talks to school children about why it is important to stay away from crime. (Source: Prison Reform Trust)



[Further information about Liaison and Diversion services](#)



[This document produced by the Crown Prosecution Service](#) explains the process of being a witness (either as a victim or an observer of a crime) and the support your relative is entitled to, e.g. referral to victim support. There are case studies you can read including one about involvement from a professional independent advocate

If a decision is made about a place of safety

Your relative may become involved with the CJS because it has been identified that they need to be 'removed to a place of safety' for their own protection or the protection of others. A place of safety could be a mental health service or police station. Taking someone to a place of safety is to allow them to be assessed by a doctor and interviewed by an approved social worker. The maximum time someone can be detained is 48 hours. If the police remove someone under the Mental Health Act to a police station, the person being removed is entitled to:

- Have another person of their choice informed of their whereabouts (this could be a family carer)
- Access to legal advice
- The support of an 'Appropriate Adult' (this could be a family carer)
- Medical treatment from a suitable healthcare professional if needed, e.g. if they have a physical injury

As a Victim

Being a victim of a crime is a distressing situation, and for your relative this might involve:

- Being interviewed
- An impact on self-esteem and confidence, e.g. did this happen to me because I have a learning disability, autism or both
- Conflict of loyalty, e.g. mate crime - "I thought they were my friend. I didn't know what they were doing to me was wrong"
- Providing evidence if the case goes to court

Your relative's rights

If your relative is identified as a vulnerable person under the [Police and Criminal Evidence Act 1984 Code of Practice](#) they will be entitled to support from an Appropriate Adult. The police should not interview your relative until the Appropriate Adult is present. The exception to this is if a delay would result in a risk of harm to property or people. An Appropriate Adult should not be employed by the police and have experience of supporting people with a learning disability, autism or both. You, another family member or friend can act as your relative's Appropriate Adult but if you do not feel able to take on this role then it is the responsibility of the police to identify somebody on your relative's behalf.

An Appropriate Adult can request reasonable adjustments (Equality Act 2010), e.g.

- Sensory needs: where your relative is interviewed
- Communication needs: the way in which information is presented, somebody who can sign
- Access to disabled toilet, food and drink, regular breaks



[This link provides information from gov.uk](#) about your relative's rights as a victim of a crime



[Watch this video](#) on being an Appropriate Adult



[Visit this webpage for more information about liaison and diversion](#) if your relative becomes involved with the Criminal Justice System as a suspect. It includes case studies and video clips.

Taking proactive action

[Read this fact sheet \(including a template form to share useful information about your relative with the police\)](#) about asking if your relative can be 'flagged' on the police system. This is like a 'reasonable adjustments' flag for health care services. Not all police systems operate a flag system but there are other ways they can record information that alerts them to your relative's needs.



The type of information which is useful to share includes:

- Information about who to contact in an emergency
- The address of your relative. This means that if the police have to visit your relative's home, they will be aware that somebody vulnerable lives there, what their needs are and the best way to interact with your relative
- Communication needs, e.g. my relative uses sign language to communicate, my relative may repeat what you say (echolalia), they are not being disrespectful
- Sensory needs, e.g. my relative is tactile defensive (reacts strongly to being touched). Please consider ways for them to co-operate with you without touching them. Instead of guiding them physically, tell them what you want them to do, or show them

Litigation Friend

Having a 'Litigation Friend' allows your relative to access the justice system fairly and with support, for example a court case relating to:

- A civil case (e.g. if your relative wants to take legal action against a provider because of abuse)
- A Court of Protection case

Who can be appointed a Litigation Friend

There are two groups of people who can be appointed as a Litigation Friend:

1. A person with authority as a Deputy
2. If there is no appointed Deputy, then an Appropriate Adult (this could be you) can put themselves forward as a Litigation Friend. You will need to meet certain criteria:

- You can fairly and competently conduct proceedings on behalf of the protected party (your relative)
- You have no interest adverse to that of the protected party (your relative) and
- You undertake to pay any costs which the protected party (your relative) may be ordered to pay in relation to the proceedings subject to any repayment they might be entitled to



[This link provides further information](#) from gov.uk about Litigation Friends



[Read this information from the CBF](#) about Legal Support

Case Studies

John

John has an autistic spectrum disorder and mild learning disabilities. He was a victim of mate crime (when a person is harmed or taken advantage of by someone they thought was their friend) and was arrested because his flat was used by 'friends' to store marijuana plants. The arresting officer noticed that John was not responsive to his questions and did not give eye contact. John kept talking about needing to go home to watch EastEnders at 7pm. The officer called for an Appropriate Adult because he felt that John had a communication difficulty and needed help to understand what was happening. The Appropriate Adult spent time with John explaining what was happening. She gave him time to understand what she had said after each sentence and also wrote down the questions so he could read them. At times she used pictures. She drew his house and where his friends lived and asked him to name his friends who stored the plants in his house. She asked him if he preferred her not to look him in the eye and he said yes. The information gathering took longer, but by using these reasonable adjustments they were able to get a clearer picture of what was going on.

Pete

A community psychiatric nurse supported a client with mild learning disabilities with an intervention to reduce his drug taking. He realised that simply talking about the pros and cons of taking drugs was not helping Pete, so he printed out a photo of a set of weighing scales from the internet and stuck it to a flip chart which was divided into two columns with 'good things

and 'bad things' about taking drugs. He talked to Pete and wrote down Pete's responses in simple language accompanied with images, such as a pound sign to represent having more money, and a set of bars to represent going to prison. After the session he gave it to Pete to go home and look at it for homework. The visual representation really helped Pete and he began to respond to treatment.

Matt

Matt was arrested for assault. While in police custody he was seen by a nurse who thought he might be on the autistic spectrum. Although Matt didn't have a formal diagnosis of autism, his family reported concerns about his behaviour consistent with that reported by the nurse. Matt's case went to court, and he was found guilty of assault. During his trial, the magistrates felt that something wasn't "quite right" and asked for a medical report to help them decide what sentence would be appropriate. Matt was remanded into custody for medical reports, which took longer than expected. Eventually Matt was seen by two doctors and their reports were presented to the court. Both reports described Matt as being on the autistic spectrum with underlying psychosis and recommended hospital to see if Matt would respond to treatment. He is currently in a low secure hospital ward in his local area that specialises in autistic spectrum disorders and mental illness. Matt now has a diagnosis, which means he is likely to receive appropriate treatment and support for his condition. This, in turn, should help him to manage his behaviour and reduce re-offending.

(Source: Rethink Mental Illness)

Further information



This report was commissioned by the LGA for the Greater Manchester Health and Justice Steering Group (Learning Disability and Autism). It details how the Criminal Justice System, and its prevention partners are working to address the challenges faced by people with a learning disability, autism or both people. It includes a section about family carers, how they have supported their relative and what support for them should look like:

<https://www.local.gov.uk/publications/people-learning-disability-and-autism-criminal-justice-system>

NHS Health Education England: Working in community settings with people with learning disabilities and autistic people who are at risk of coming into contact with the CJS. A resource for health and social care staff:

http://www.researchgate.net/publication/354089773_Working_in_community_settings_with_people_with_learning_disabilities_and_autistic_people_who_are_at_risk_of_coming_into_contact_with_the_criminal_justice_system_A_resource_for_health_and_social_care_staff

Resources provided by Keyring <https://www.keyring.org/cjs/useful-resources>

Information and guidance from the National Autistic Society

<https://www.autism.org.uk/advice-and-guidance/topics/criminal-justice/criminal-justice/professionals>

Books Beyond Words has a range of picture stories about involvement in the CJS

<https://booksbeyondwords.co.uk/bookshop?category=Criminal+Justice>

NHS guidance about ensuring the healthcare needs of people with a learning disability, autism or both are met whilst in prison <http://www.england.nhs.uk/wp-content/uploads/2021/09/B0707-meeting-the-healthcare-needs-of-adults-with-a-learning-disability-and-autistic-adults-in-prison.pdf>

The charity User Voice has published this report titled “Neuro...What? Neurodiversity in the Criminal Justice System” including personal accounts

<http://www.uservice.org/consultations/neurodiversity/>

Report from Keyring (including case studies demonstrating positive outcomes and identifying areas which need to improve)

https://www.keyring.org/uploaded_files/1791/images/Fairer%20Justice%20Report.pdf

This guidance is for the criminal justice system and how they can support autistic people

<http://www.gain-grantham.co.uk/wp-content/uploads/2016/12/ASD-and-Criminal-Justice.pdf>

Police factsheet from the Challenging Behaviour Foundation

<https://www.challengingbehaviour.org.uk/wp-content/uploads/2021/02/CV019-Police-Factsheet.pdf>



We are the charity for people with severe learning disabilities who display challenging behaviour. We make a difference to the lives of children and adults across the UK by:

- Providing information about challenging behaviour
- Organising peer support for family carers and professionals
- Giving information and support by phone or email
- Running workshops which reduce challenging behaviour

To access our information and support, call 01634 838739, email info@theCBF.org.uk, or visit our website: www.challengingbehaviour.org.uk

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