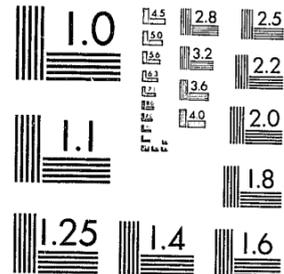


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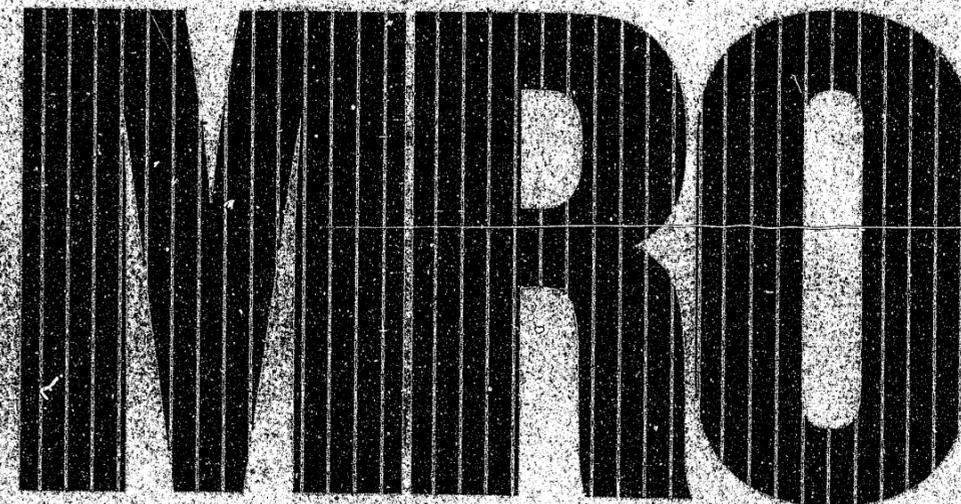
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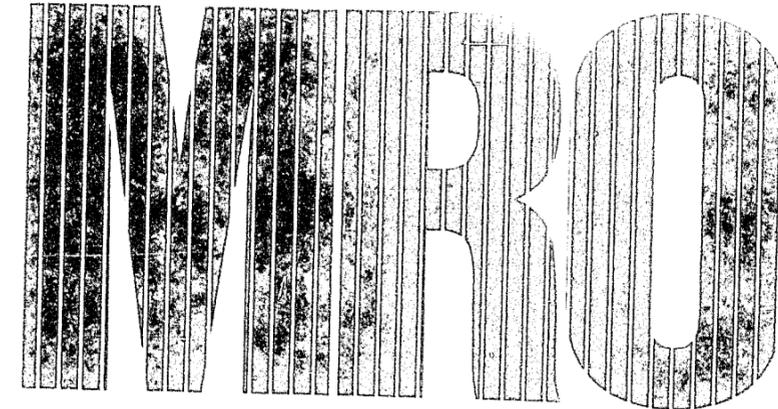
Mentally Retarded Offenders:

A Handbook for Criminal Justice Personnel

84622

Margaret Kennedy, Marole Goodman, Eisle Day, and Judith Burt W. Griffin

Mentally Retarded Offender Project
FEDERATION FOR COMMUNITY PLANNING



Mentally Retarded Offenders:

A Handbook for Criminal Justice Personnel

by Margaret Kennedy, Marcie Goodman, Elsie Day, and Judge Burt W. Griffin

Mentally Retarded Offender Project
FEDERATION FOR COMMUNITY PLANNING

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Foreword

Determining the appropriate treatment and placement for mentally retarded persons who commit crimes is one of the most perplexing problems that judges face. In 1977 the Federation for Community Planning offered to help Cuyahoga County judges deal more effectively with this problem. From that offer, in 1979, the Mentally Retarded Offender Project came into existence with funding from the Ohio Department of Mental Retardation and Developmental Disabilities and the Law Enforcement Assistance Administration. The three major objectives of the Project were (1) to research the nature and magnitude of the problem, (2) to develop or gain access to residential and supportive services, and (3) to train justice system personnel to identify and handle mentally retarded offenders. This Handbook was developed to help meet the third objective. In addition to serving as a training resource, it can also be used as an informational guide for justice system personnel.

This Handbook reflects the close cooperation of the Federation for Community Planning, the Common Pleas Court of Cuyahoga County, Region IV of the Ohio Department of Mental Retardation and Developmental Disabilities, and numerous private and public agencies concerned with mentally retarded persons.

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Introduction

Personnel in the criminal justice and mental retardation systems tend to regard the mentally retarded offender as a misfit in their respective systems of service. They look to each other to assume responsibility for both service programming and service funding.

Historically, the relationship between mental retardation and criminal behavior has been a subject of great debate. Early writers tried to demonstrate that retarded persons were predisposed to commit criminal acts. Between 1890 and 1920 theorists tried to link retardation with criminality, poverty, insanity, and general moral and physical degeneration. Their explanations of these various phenomena looked no further than the individual as the source of the problem. During this period some even went so far as to assert that the number of criminals falling into the mentally retarded range was close to 100 percent.

During the years 1921 to 1960 the debate over causes of crimes shifted to include the consideration of social factors within one's environment. Theorists questioned whether mentally retarded persons were in fact predisposed to commit criminal acts. The focus of blame shifted from the individual to the family unit, and factors such as the impact of poverty, poor education, and suspect or nonexistent health care were stressed.

Since 1960 concern about mentally retarded offenders has greatly increased. Many authorities have recognized that no direct causal relationship exists between mental retardation and criminal behavior. However, the problems

posed and encountered by mentally retarded offenders still exist.

One way the Mentally Retarded Offender Project in Cuyahoga County is trying to solve the problems is through this Handbook. The purpose of this Handbook is to provide a basis first for distinguishing mentally retarded persons from nonretarded persons in the criminal justice system and second for adequately handling mentally retarded persons. It is important to distinguish retarded from non-retarded persons in the criminal justice system for numerous reasons, including the following:

- **Legal Advocacy or Aid** - Some mentally retarded persons need more legal assistance than nonretarded persons because it is more difficult for them to understand the legal process and system.
- **Treatment Plans** - Alternative treatment plans (to incarceration) should be considered for some mentally retarded persons. Services should be sought keeping in mind that the label "mentally retarded" has both positive and negative implications regarding availability of, eligibility for, and access to services.
- **Supervision by the Criminal Justice System** - Those mentally retarded offenders who remain in the criminal justice system may need special supervision. Their intellectual and personality limitations can make situations especially difficult for them.

It is important to handle mentally retarded persons adequately while they are in the criminal justice system so that they can become responsible citizens upon leaving the system.

Chapters 1-4 of the Handbook are addressed to all of the criminal justice personnel who are the audience for this Handbook — police officers, attorneys, judges, probation officers, and parole officers. These chapters define mental retardation, describe mentally retarded offenders, tell how to identify mentally retarded persons, and give suggestions on interviewing mentally retarded persons. Chapter 5, on how to assess a case, applies to attorneys, judges, probation officers, and parole officers. Chapter 6, on preparing and determining the disposition of the court case, is specifically directed toward judges and attorneys. Chapter 7, on supervising

and habilitating mentally retarded offenders, was written for probation and parole officers. The audience that each chapter addresses is indicated above each chapter title. A glossary and a bibliography are provided for all readers. For readers from Cuyahoga County, the back pocket of the Handbook contains a directory of available mental retardation resources in Cuyahoga County. Readers from beyond Cuyahoga County can use the pocket to insert their own resource list.

For purposes of simplification, all persons in this Handbook are referred to as male.

We hope that this Handbook will alert professionals in the field of criminal justice to the special needs of mentally retarded persons and assist them in meeting these needs.

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Mentally Retarded Offender Project
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Cuyahoga County
1982**

Mentally Retarded Offenders:

A Handbook for Criminal Justice Personnel

1

Understanding Mental Retardation

Mental retardation is a complex entity. It can be attributed to any of more than 300 causes, and there are different levels of retardation.¹ For example, mildly retarded persons may be independent and require few or no services for their condition. On the other hand, profoundly retarded persons generally require many services and routine supervision.

CRITERIA FOR MENTAL RETARDATION

Mental retardation professionals agree that three criteria must be met for a person to be diagnosed as mentally retarded. These essential features are (1) significantly subaverage general intellectual functioning, (2) resulting in, or associated with, deficits or impairments in adaptive behavior, (3) with onset before the age of 18. The diagnosis is made regardless of whether or not there is a coexisting mental or physical disorder.

General intellectual functioning is defined as an intelligence quotient (IQ) obtained by assessment with one or more of the individually administered general intelligence tests, such as the Stanford-Binet or the Wechsler Adult Intelligence Scale - Revised (WAIS-R). Significantly subaverage general intellectual functioning is defined as an IQ of 67 or below on the Stanford-Binet or 69 or below on the WAIS-R (*refer to the chart on page 3*).

Adaptive behavior refers to the effectiveness with which an individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group. There are scales designed to quantify adaptive behavior, such as the American Asso-

ciation for Mental Deficiency (AAMD) Adaptive Behavior Scale and the Vineland Social Maturity Scale, but none is considered sufficiently reliable and valid to be used alone to evaluate this aspect of functioning. Therefore, clinical judgment is necessary for the assessment of adaptive behavior, with the individual's age being taken into consideration.

When the clinical picture described above develops before the age of 18, the person is considered to be mentally retarded. When the clinical picture develops for the first time after the age of 18, the syndrome is a dementia.

Note that all three criteria must be met for a person to be diagnosed as mentally retarded. For example, an individual with an IQ near but below 70 without any impairment in adaptive behavior appropriate for his age would not be diagnosed as mentally retarded.²

The chart on page 2 illustrates the three criteria that define mental retardation.³

It is important not to confuse the term "mental retardation" with the term "mental disorder" (prior to 1980 the psychiatric profession used the term "mental illness;" currently the term "mental illness" has been discarded from professional use and replaced with the term "mental disorder"). Each mental disorder is defined as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and is typically associated with either a painful symptom (distress) or impairment in one or more important areas of functioning (disability). The term "mental disorder" infers that there is a behavioral, psychological, or biological dysfunction.⁴

CRITERIA THAT DEFINE MENTAL RETARDATION
INTELLECTUAL FUNCTIONING

		Significantly subaverage manifested before the age of 18	Significantly subaverage not manifested before the age of 18
ADAPTIVE BEHAVIOR	Deficits or impairments manifested before the age of 18	Mentally Retarded	Not Mentally Retarded
	Deficits or impairments not manifested before the age of 18	Not Mentally Retarded	Not Mentally Retarded

LEVELS OF MENTAL RETARDATION

As previously stated, there are different levels of mental retardation. Both the American Association for Mental Deficiency (AAMD) in its *Manual on Terminology and Classification in Mental Retardation* and the American Psychiatric Association (APA) in its *Diagnostic and Statistical Manual of Mental Disorders (DSM III)* use the terms mild, moderate, severe, and profound to describe the levels. Note, however, that the AAMD and APA are in conflict regarding these terms. Most mental retardation professionals refer to the AAMD for diagnostic criteria since the APA's definitions are not standardized through testing.

Mildly mentally retarded persons make up the largest segment of those individuals with mental retardation — about 80 percent. Individuals with this level of mental retardation can develop social and communication skills during the preschool period, and they have minimal impairment in sensorimotor areas. Often they are not distinguishable from normal children until a later age (frequently the fact that they are mentally retarded is discovered when dif-

ficulties with school work lead to diagnostic evaluations). With adequate training, they can usually achieve social and vocational skills sufficient for minimum self-support. But they may need guidance and assistance when under unusual social or economic stress. Mild mental retardation is roughly equivalent to the educational category "educable."

Moderately mentally retarded persons make up 12 percent of the entire population of individuals with mental retardation. During the preschool period individuals with this level of mental retardation can talk or learn to communicate, but they may have poor awareness of social conventions. They can profit from training in social and occupational skills, and they may learn to travel alone in familiar places. They may be able to contribute to their own support by performing unskilled or semi-skilled work in competitive employment or in sheltered workshops. They need supervision and guidance when under mild social or economic stress. Moderate mental retardation is roughly equivalent to the educational category "trainable."

The group of individuals with severe mental retardation makes up seven percent of all

persons who are mentally retarded. During the preschool period they may show poor motor and speech development. During the school-age period they may need speech therapy and self-care training. They are generally able to profit from pre-vocational training. During their adult years they may be able to perform simple work tasks under close supervision.

The group of individuals with profound mental retardation constitutes less than one percent of all persons who are mentally retarded. During the preschool period these children display minimal capacity for sensorimotor functioning. A highly structured environment, with constant aid and supervision, is required. During the school-age period some further motor development may occur, and the children may respond to minimal or limited training in self-care. Some speech and further motor development may take place during the adult years. Very limited self-care may be possible in a highly structured environment with constant aid and supervision.⁵

According to the APA, persons with intellectual functioning in the IQ range of 71 to 84 generally function fairly independently. The APA categorizes these persons as borderline intellectual functioning when there are deficits in adaptive behavior associated with low intellectual functioning. Differentiating mild mental retardation from borderline intellectual functioning requires careful consideration of all

available information, including psychological test scores.⁶ Note that the AAMD defines the borderline intellectual functioning IQ range as 70 - 84.

The preceding discussion on the criteria for and the levels of mental retardation represents a clinical definition of mental retardation. It is important to note that the statutory definition of mental retardation is not the same as the clinical definition because it excludes the level of mild mental retardation (Ohio Revised Code Section 5123.01). The legal definition of mental retardation will be discussed further in Chapter 6.

TESTING FOR MENTAL RETARDATION

Testing for mental retardation is usually done by a psychologist rather than a psychiatrist. As previously stated, two types of tests are administered in determining whether a person is retarded. These are a standardized intelligence test (to measure levels of intellectual functioning) and an adaptive behavior scale (to measure deficits in adaptive behavior). A mentally retarded person is placed in the mild, moderate, severe, or profound range following each type of test; the diagnosis is made in two separate categories.

Different standardized intelligence tests produce varying IQ scores for each level of mental retardation. The IQ ranges for two frequently used tests are listed in the chart below.

I.Q. RANGES FOR THE LEVELS OF MENTAL RETARDATION

LEVELS	STANFORD-BINET	WECHSLER-REVISED (WAIS-R) FULL SCALE
MILD	67 - 52	69 - 55
MODERATE	51 - 36	54 - 40
SEVERE	35 - 20	39 - 25
PROFOUND	19 and below	24 and below

The Stanford-Binet is recognized as predictive of academic performance in relation to the age group against which one is tested. This test presupposes language skills.

The Wechsler-Revised (WAIS-R) full scale score combines an assessment of verbal with performance scale scores and provides a profile of distinguishable mental traits. Note that three IQ scores may be given in WAIS-R results: the verbal scale score IQ, the performance scale score IQ, and the full scale score IQ.

Measures of adaptive behavior frequently used include the Vineland Social Maturity Scale, the Gunsburg Progress Assessment Chart, and the AAMD Adaptive Behavior Scale. Problems often exist with adaptive behavior tests because they are open to wide interpretation by the person giving the test.

In using tests of intellectual functioning and adaptive behavior, a word of caution is necessary. A major concern with the tests is the interference of cultural biases. These tests reflect social learning and are therefore "culture bound." Whether or not a test is valid depends on the cultural population on which the norms were standardized. For example, if a test was developed and standardized on an all white population, members from a non-white group might not perform well on the test.⁷

The results of IQ tests and adaptive behavior measures are used as a basis for determining the services needed by a mentally retarded person. It is important that the test results be current to ensure accuracy. This is because mentally retarded persons do learn and grow, although the pace is slower than for persons who are not retarded. For adults the test results should be no more than three years old. The test results of persons under the age of 16 should be no more than one year old.

FACTS AND FALLACIES ABOUT MENTAL RETARDATION

The following are commonly raised questions about mental retardation.

What causes mental retardation?

A common misconception is that mental retardation is usually inherited, but this is not true. In approximately 80 percent of the cases diagnosed as mental retardation, it is not possible to determine the cause. The remaining 20 percent can be attributed to any of more than 300 causes. Following is a list of some of the known causes of mental retardation:

- *heredity* (a small percentage of cases);
- *poor prenatal care* such as malnutrition or lack of medical care;
- *brain injury* at birth or during the developmental period (before age 18);
- *infections* such as encephalitis or meningitis;
- *intoxications* such as carbon monoxide, lead, arsenic poisoning, or drug abuse (these may cause chromosomal changes associated with retardation);
- *poor nutrition*;
- *lack of intellectual and/or physical stimulation* due to environmental and other factors.⁸

How many mentally retarded persons live in the United States?

Approximately six million mentally retarded persons live in the United States today. This figure is based on a prevalence rate for mentally retarded persons in any given population that is estimated as being between two and three percent.⁹ Mental retardation, of course, exists in all societies and in all parts of the world. It can be found in extremely primitive cultures as well as in the most advanced nations.

What do mentally retarded persons look like?

The vast majority of retarded persons look like anyone else. They do not all look alike as many people think. As much variety exists in the characteristics of retarded persons as in the general population. Some are short and fat,

some are tall and slim. Some are slow and placid, some are nervous and jumpy. Some project joyous and sunny personalities, others project depression and gloom.

Of course, certain mentally retarded persons are physically noticeable due to handicaps and defective coordination. Most, however, are normal in appearance. Therefore, it is difficult to single out by physical appearance persons who may be retarded.¹⁰

Where do mentally retarded persons live?

Most mentally retarded persons live within the community — with their families, on their own, in group homes, and in foster homes.¹¹ Many people incorrectly believe that most retarded people are confined to institutions. In reality, only about four percent of the retarded persons in the United States are ever institutionalized. Mentally retarded persons who are institutionalized may be confined because of their need for greater care than their families or guardians are able to or want to provide.¹²

What is the average life span of mentally retarded persons?

Most retarded persons live a normal life span. It is difficult to say what the average might be because factors such as medical care, degree of retardation, and living environment cause great variation. Also, some retarded persons suffer from secondary, related handicaps that impair their health.¹³

Can mentally retarded persons learn, develop, and change?

Yes. Like all human beings, mentally retarded persons can be taught far beyond their apparent capacities. This applies to all levels of retardation, from the mildly retarded to the most profoundly retarded. Stigma and over-protection lead to little apparent growth, but personal attention and patience foster development. Individual development depends on the level of the person's retardation.¹⁴

Do mentally retarded persons have morals?

Yes. Most mentally retarded persons can learn the difference between right and wrong and, therefore, like nonretarded persons, do develop their own sets of morals.¹⁵

Can mentally retarded persons work?

Yes. Many mentally retarded persons are employed, and they handle their work with great competence. They can be found working in places such as cafeterias, hospitals, department stores, offices, and factories. Some develop more than average skills and function successfully in sports, music, mathematics, mechanics, and other areas generally viewed as quite complex.

For those persons who are unable to perform in competitive employment, there are community sheltered workshops that provide job training and experience in unskilled and semi-skilled labor.¹⁶

Are mentally retarded persons aware that they are "different" from other people?

Usually mentally retarded persons are deeply aware that they are different from other people and have certain intellectual and social inadequacies. In fact, some mentally retarded persons who are aware of their inability to compete with nonretarded people of their own age and sex may be emotionally affected by the realization.¹⁷

Do mentally retarded persons have the same feelings and needs as "normal" people?

Yes. Mentally retarded persons have sensitive feelings, desires, and hopes. They respond positively, like all human beings, to love, tenderness, and respect. Likewise, they respond negatively to belittling or demeaning treatment. Their personalities are formed by a combination of heredity and environment. They are subject to the same influences as nonretarded people, and their emotional reactions cover as wide a range. They have the same emotional stresses

as everyone else, and most have the added frustration of being painfully aware that they are considered "different." The sex drives of retarded persons have the same range as those of nonretarded persons. However, retarded persons usually have less opportunity to express their sexual feelings appropriately. And when they do, the expression is often less subtle than that of nonretarded people.¹⁸

Are mentally retarded persons easily influenced by others?

In general mentally retarded persons are eager to be accepted by others and, thus, are easily persuaded by them. Some retarded persons tend to associate with people younger than themselves because they are looking for friends who are on their own level.¹⁹

Are mentally retarded persons "better off with their own kind?"

Mental retardation professionals believe that retarded persons who are able to live within the community should do so. The segregation of mentally retarded persons would only reinforce their difficulties.²⁰

Do mentally retarded persons have mentally retarded children?

Little likelihood exists of mentally retarded persons having mentally retarded children based on heredity alone. However, as with anyone, poor prenatal care or an inferior developmental environment can lead to retardation in offspring.²¹

Can mentally retarded persons be cured?

No. An actual cure for mental retardation does not exist; that is, it cannot be completely overcome with present knowledge and techniques. But most mentally retarded persons' functioning can be improved with training and treatment.²²

Are some people mistakenly diagnosed as mentally retarded?

Yes. Sometimes individuals who have a mental disorder may appear to be mentally retarded. They may even test in the range of mental retardation. However, with psychiatric treatment these individuals will improve. Another example of a mistaken diagnosis involves persons of borderline intelligence who are experiencing emotional problems. While they are having emotional problems their IQ scores may be "depressed" into the retardation range; when their problems are resolved, their scores may improve.

Summary

- *Mental retardation is a condition that involves significantly subaverage general intellectual functioning resulting in, or associated with, deficits or impairments in adaptive behavior with onset before the age of 18.*
- *The four levels of mental retardation are mild, moderate, severe, and profound.*
- *The two types of tests used in diagnosing mental retardation are IQ tests and adaptive behavior scales.*
- *Mental retardation is frequently misunderstood. In reality most mentally retarded persons look like anyone else and have the capability to learn and develop, although at a slower pace than nonretarded persons.*

Notes

1. Association for Retarded Citizens, Cuyahoga County, March 25, 1980 meeting.
2. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (Third Edition) - DSM III* (Washington, D.C.: American Psychiatric Association, 1980), pp. 36-37.
3. Adapted from the model designed by Herbert J. Grossman, M.D., ed., *Manual on Terminology and Classification in Mental Retardation*, Special Publication Series, No. 2, 1973.
4. American Psychiatric Association, *DSM III*, p. 6.
5. *Ibid.*, p. 39.
6. *Ibid.*, p. 40.
7. Miles B. Santamour and Bernadette West, *Retardation and Criminal Justice: A Training Manual for Criminal Justice Personnel* (New Jersey: President's Committee on Mental Retardation and New Jersey Association for Retarded Citizens, September 1979), pp. 25-26.
8. James Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole* (Huntsville, Texas: Criminal Justice Center of Sam Houston State University, 1978), p. 22.
9. Howard J. Alperin et al., "Representation of a Mentally Retarded Criminal Defendant," *Massachusetts Law Review* (June - August 1979): 103, Note 7; Gunnar Dybwad, "Whom Do We Call Mentally Retarded?", in *New Neighbors: The Retarded Citizen in Quest of a Home*, ed. Carolyn Cherington and Gunnar Dybwad (Washington, D.C.: President's Committee on Mental Retardation, 1974), p. 33.
10. Kenneth S. Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender* (South Carolina: Statewide Technical Assistance and Training Project, University Affiliated Facilities, University of South Carolina, 1979), p. 9; Santamour and West, *Retardation and Criminal Justice*, p. 8.
11. Santamour and West, *Retardation and Criminal Justice*, p. 5.
12. Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 11.
13. Santamour and West, *Retardation and Criminal Justice*, p. 4.
14. *Ibid.*, p. 7.
15. Steve Friedman, Cuyahoga County Department on Institutional Supportive Services, July 8, 1980 meeting.
16. Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 10.
17. *Ibid.*
18. *Ibid.*, pp. 10-11; Santamour and West, *Retardation and Criminal Justice*, p. 8.
19. Hoffman, *The South Carolina Law*

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20. Santamour and West, *Retardation and Criminal Justice*, p. 8; Jennifer Howse, "The Goal of Independence," in *New Neighbors: The Retarded Citizen in Quest of a Home*, ed. Carolyn Cherington and Gunnar Dybwad (Washington, D.C.: President's Committee on Mental Retardation, 1974), pp. 51-59; R.C. Scheerenberger, "Deinstitutionalization in Perspective," in *Deinstitutionalization: Program and Policy Development*, ed. James L. Paul et al. (Syracuse, New York: Syracuse University Press, 1977), pp. 3-14.
21. Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, pp. 18-19.
22. *Ibid.*, p. 19; Santamour and West, *Retardation and Criminal Justice*, p. 5.

2

Describing Mentally Retarded Offenders

The following discussion on mental retardation and criminal behavior is not intended to excuse the crimes committed by mentally retarded persons. The purpose of the discussion is to explain the specific characteristics and needs of retarded persons when they are in contact with the criminal justice system.

SOME COMMON QUESTIONS

What factors may contribute to mentally retarded persons' involvement in criminal behavior?

The following factors may contribute to mentally retarded persons' involvement in criminal behavior:

- Many mentally retarded offenders occupy from birth lower social class positions. They may, therefore, experience a number of related circumstances such as poor living conditions, inadequate health care, limited educational opportunities, low occupational status, and high unemployment.
- Mentally retarded persons may not fully understand the significance of their actions and the consequences that follow those actions.
- Sometimes, in an effort to be accepted or recognized, mentally retarded persons unknowingly involve themselves in criminal activity.
- Mentally retarded persons may be more easily led into criminal activity by others.

- Some mentally retarded persons are frustrated because of their own limitations and feelings of rejection. They may, therefore, strike out against society.
- Mentally retarded persons may not know how to obtain desired goals legally.
- Some mentally retarded persons commit crimes for the same reasons — whatever they may be — as nonretarded persons.¹

What disadvantages do mentally retarded persons face while within the criminal justice system?

A mentally retarded person's experiences while within the criminal justice system may be characterized by the following disadvantages:

- In some cases the condition of mental retardation is not even recognized.
- A mentally retarded person may not understand the implications of the Miranda Rights being read to him.
- A mentally retarded person who has been arrested may confess quickly and react to friendly suggestions and intimidations. He may try to say what he thinks the other person wants to hear.
- A mentally retarded person may have difficulty communicating with his lawyer and with court personnel. This can hamper the preparation of the case.
- A mentally retarded person often pleads guilty more readily than nonretarded

persons, and he is more often convicted of the arresting offense rather than a reduced charge. Plea bargaining, to reduce charges and thereby sentences, is used less frequently with mentally retarded persons.

- Pretrial and presentence psychological exams sometimes are not requested.
- Appeals of conviction are sought less frequently with mentally retarded persons, and postconviction relief is requested in very few cases.
- Probation and other diversionary non-institutional programs are used less frequently with mentally retarded persons.
- In prison the mentally retarded person may be slower to adjust to the routine, have more difficulty in learning regulations, and, as a result, accumulate more rule infractions and be subject to greater discipline.
- A mentally retarded person may be the brunt of practical jokes and sexual harassment while in prison.²

Many of these disadvantages are exemplified in Max S. Brown's article, "The Trial: Jack Carmen's Day in Court," *Columbus Monthly*, 1978, pp. 53-77.

What profile of mentally retarded offenders can be drawn?

Any single profile of mentally retarded offenders, while perhaps agreeable to some, would seem stereotyped and misleading to others. For example, according to some, mentally retarded offenders are typically male and members of minority groups. According to others, they are both male and female, minority and nonminority group members. While some studies cite mentally retarded offenders as being school dropouts and welfare recipients, other studies indicate that they are not dropouts and do hold low skill jobs. To compile all of these profiles into one becomes a generalization that has little meaning. Instead, a profile should be determined for each mentally retarded offender population according to its status, such as in a county correctional facility, in a state correctional facility, or on probation.

Studies that Profile Certain Aspects of Mentally Retarded Offenders

- Brown, Bertram S., and Courtless, Thomas F. "Fantasy and Force: A Study of the Dynamics of the Mentally Retarded Offender." *Journal of Criminal Law, Criminology, and Police Science* 61 (1970): 71-77.
- Haskins, J., and Friel, C. *Project CAMIO: The Mentally Retarded in an Adult Correctional Institution*, Vol. IV. Huntsville, Texas: Sam Houston State University, 1973.
- Illinois, Correctional Services for the Developmentally Disabled. *The Developmentally Disabled Offender in the Illinois Justice System*. Chicago, Illinois: June 1975.
- Kentucky, Legislative Research Commission. *Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions*. Frankfort, Kentucky: Research Report No. 125, October 1975.

- Manne, S.H., and Rosenthal, D. "I.Q. and Age of First Commitment of Dangerous Offenders." *Correctional Psychologist* 4 (1971): 220-29.
- Marsh, R.; Friel, C.; and Eissler, V. "The Adult Mentally Retarded in the Criminal Justice System." *Mental Retardation* 13 (April 1975): 21-25.
- Morgan, D.I. "Individual and Situational Factors Related to Prison Escape." *American Journal of Corrections* (April 1971): 30-32.

- South Carolina, Department of Corrections. *The Mentally Retarded Adult Offender: A Study of the Problem of Mental Retardation in the South Carolina Department of Corrections*. Columbia, South Carolina: 1973.

- Truxel, J.R., and Sabatino, D.A. "A Comparison of Good and Poorly Adjusted Institutional Offenders." *Correctional Psychologist* 5 (1972): 178-93.³

Do mentally retarded offenders tend to commit certain crimes more than other crimes or more than nonretarded offenders do?

Whether or not mentally retarded offenders tend to commit certain crimes more than other crimes is difficult to say. Some studies state that mentally retarded offenders are more

frequently convicted of crimes of burglary and breaking and entering. Other studies claim that they are more frequently convicted of crimes of violence and homicide. Studies also disagree as to whether or not mentally retarded offenders commit certain crimes more than nonretarded offenders do.

Studies that Address Crimes Committed by Mentally Retarded Offenders

- Brown, Bertram S., and Courtless, Thomas F. *The Mentally Retarded Offender*. National Institute of Mental Health, Center for Studies of Crime and Delinquency. Washington, D.C.: Government Printing Office, 1971. DHEW Publications Number (HSM) 72-90-39.
- Dennis, Floyd. "A Research Perspective: Mental Retardation and Corrections." *The Mentally Retarded Citizen and the Criminal Justice System: Problems and Programs*. Edited by Miles Santamour. Newport, R.I.: James L. Maher Center, 1976.
- Haskins, J., and Friel, C. *Project CAMIO: The Mentally Retarded in an Adult Correctional Institution*, Vol. IV. Huntsville, Texas: Sam Houston State University, 1973.
- Kentucky, Legislative Research Commission. *Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions*. Frankfort, Kentucky: Research Report No. 125, October 1975.
- Wolfgang, Marvin, ed. *Studies in Homicide*. New York: Harper and Row, 1967.⁴

What percent of the prison population is retarded? How does this compare to the percent of the general population that is retarded?

Studies of some prison populations report incidence figures of two to three percent. These figures are consistent with the two to three percent prevalence rate of retardation within the general population. Studies of other prison populations report incidence figures that range from five to ten percent. These latter figures suggest that mental retardation is overrepresented among incarcerated populations when compared to the general population.⁵

What characteristics mark the personality and adjustment of mentally retarded offenders in prison?

Mentally retarded offenders in prison are often anxious to be accepted, quick to engage in conversation, clever in masking their limitations, demanding of attention, and easily persuaded. Also, they are often slower in adjusting to prison routine and may have difficulty in understanding what is expected of them. Unfortunately, mentally retarded offenders are often the brunt of practical jokes and are often taken advantage of by more sophisticated inmates — either as scapegoats or sex objects.⁶

Why do mentally retarded offenders tend to remain in prison longer than nonretarded offenders for similar crimes?

Mentally retarded offenders tend to serve longer sentences than nonretarded offenders for similar crimes for several reasons. First, the mentally retarded offender is often slower to adjust to prison routine and may have more difficulty learning the regulations. As a result, the retarded offender accumulates more rule infractions and decreases his chances for a timely release. Second, some retarded offenders do not take part in habilitation (*refer to Chapter 7 and the Glossary*) programs in prison, which can speed release, because of their desire to mask their limitations from others. Finally, many retarded offenders are not able to contribute to or participate in release plans.⁷

Can mentally retarded offenders be successful on probation or parole?

Mentally retarded offenders can be successful on probation or parole if needed services and resources (such as vocational training, education, and living arrangements) are available and if the retarded offenders take advantage of these things (*refer to Chapter 7*).⁸

Summary

- *The circumstances and characteristics that may contribute to mentally retarded persons' involvement in criminal behavior range from occupying low social class positions and experiencing associated disadvantages to displaying poor judgment.*
- *Mentally retarded persons face numerous disadvantages while within the criminal justice system.*
- *It is difficult to draw a profile of mentally retarded offenders.*
- *It is also difficult to determine whether mentally retarded offenders tend to commit certain crimes more than other crimes or more than nonretarded offenders do.*
- *Many studies indicate that mental retardation is overrepresented among incarcerated populations when compared to the general population.*
- *Mentally retarded offenders tend to remain in prison longer than nonretarded offenders for similar crimes.*
- *Mentally retarded offenders can be successful on probation or parole.*

Notes

1. Miles B. Santamour and Bernadette West, *Retardation and Criminal Justice: A Training Manual for Criminal Justice Personnel* (New Jersey: President's Committee on Mental Retardation and New Jersey Association for Retarded Citizens, September 1979), pp. 13, 15.

2. *Ibid.*, pp. 13-14.

3. Miles B. Santamour and Bernadette West, *The Mentally Retarded Offender and Corrections* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, August 1977), pp. 7-9.

4. *Ibid.*

5. James Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole* (Huntsville, Texas: Criminal Justice Center of Sam Houston State University, 1978), pp. 40, 41, 43; Bernice Beilin, Committee for the Developmentally Disabled Alleged Offender, Los Angeles, May 13, 1980 correspondence.

6. Santamour and West, *Retardation and Criminal Justice*, p. 9.

7. *Ibid.*

8. *Ibid.*, p. 10.

3

Identifying Mentally Retarded Persons

To determine with certainty whether a person is mentally retarded requires comprehensive examinations and tests by qualified individuals (*refer to Chapter 1*). But most of the criminal justice personnel who encounter mentally retarded persons for the first time do not have immediate access to such examinations and tests. They must, therefore, rely on their own perceptions and minimal information for initial identifications that are uncertain at best. The identifications may be particularly difficult because most mentally retarded offenders are mildly retarded and, therefore, not easily detected (*refer to Chapter 1*).

FACTORS TO CONSIDER

Highlighted below are some factors that may be helpful in determining whether a person may be mentally retarded. It must be stressed, however, that rarely will one or two of these factors alone point to retardation. The factors must be viewed as a whole in determining whether a person may be mentally retarded.

Communication Problems

When looking for the possibility of mental retardation in a person, note any communication problems:

- Is the person unable to communicate at the level of others in his approximate age group?
- Does the person have a difficult time understanding your questions?

- Does the person merely mimic responses to questions rather than try to answer them properly?
- Does the person have any speech defects or impediments?
- Is the person unable to use abstract reasoning concepts?
- Does the person have a limited vocabulary, poor pronunciation or articulation, and limited grammatical ability?¹

Keep in mind, however, that there are conditions other than mental retardation that can affect a person's ability to communicate (*refer to the section in this chapter on false conclusions*).

Attention Span and Memory Difficulties

A characteristic of mentally retarded persons is that they often have short attention spans. They may have difficulty staying on the subject you are trying to discuss. Shortness of memory is also associated with mental retardation. Of course, people who are not mentally retarded may have short attention spans and shortness of memory, too.²

Social Behaviors and Interactions

Be observant of a person's social behaviors and interactions as the presence of certain ones can indicate mental retardation:

- Does the individual prefer the company of a younger peer group?

- Does the individual have an excessive desire to please others?
- Does the individual have someone special who helps him in certain situations or transactions?
- Does the individual act differently (noticeably younger) than his age would warrant?
- Does the individual display inappropriate social distances when interacting with others?
- Is the individual easily led or persuaded by others?³

Many people who are not mentally retarded may behave and interact socially in some of the ways mentioned above. It is the combination of all these factors that points toward the possibility of mental retardation in a person.

Task Performance

The inability or hampered ability to perform relatively simple tasks like those listed below may be a sign of mental retardation:

- identifying oneself,
- reading and writing,
- identifying money and making change,
- telling time,
- using the telephone,
- finding one's number in the telephone book,
- giving directions to one's home, school, or work,
- understanding directions,
- effectively describing the appearance of a known individual,
- using public transportation.⁴

If you find that a person has difficulty with these tasks, be sensitive to that person's dignity. Also, remember that anyone can have difficulty at times with some of these tasks.

Educational Background

An important clue as to whether a person may be mentally retarded can be obtained by asking the person about his education:

- Find out what school he attends or attended. It may be a special school, or a school with special classes, in your area.
- Determine if the person attends a vocational education center. Many mentally retarded persons do although, certainly, not all people who attend such centers are mentally retarded.⁵

Any indications that an individual's education is or was of a special nature should always be noted.

Vocational Experience

"Yes" answers to the following questions may indicate that a person may be mentally retarded:

- Has the person ever attended, or is he presently attending, a sheltered workshop?
- Does the person lack basic job readiness skills, such as knowing how to look and apply for jobs, complete job applications, and keep appointments?
- Does the person show job instability because of misunderstandings with supervisors and co-workers?⁶

Recognize, however, that people who have disabilities other than mental retardation attend sheltered workshops; that just about anyone can have difficulties in obtaining employment, and that many people experience clashes with others while on the job.

Physical Appearance

As stated in Chapter 1, physical signs rarely indicate that a person is mentally retarded, particularly when the person is mildly or even moderately retarded. Most retarded persons

encountered by criminal justice personnel look normal. Still, some experts do suggest looking at the following physical attributes when faced with the possibility that a person may be mentally retarded:

- Is the person inappropriately dressed for the season?
- Does the person have any physical defects?
- Does the person move awkwardly or have poor motor coordination?
- Does the person have a slow reaction time?⁷

Of course, the presence of any or all of these factors does not prove that a person is mentally retarded (*refer to the section in this chapter on false conclusions*).

Childhood History

Usually a person's childhood history is of little help in determining whether the person may be mentally retarded. But it can contribute some information. The following factors might be investigated:

- Are there any medical records that indicate serious illness or accident in early life?
- Are there any indications of childhood malnutrition, abuse, or neglect?
- Was the person ever evaluated by institutional facilities as a child?
- Did the person, as a child, experience a slow or delayed development? For example, did he walk late, talk late, start school late?⁸

Whatever the findings, be cautious about relying too heavily on a person's childhood history as an indication of whether the person may be mentally retarded.

CRIMINAL CIRCUMSTANCES

Pay particular attention to the following when looking at the circumstances of a crime involving a person who you suspect may be mentally retarded:

- Does it appear that the person took part in the crime with others to gain their acceptance? (Mentally retarded persons often anxiously seek the acceptance of others.)
- Was the person with younger people at the time of his arrest? (Younger peer groups are more appealing to some mentally retarded persons.)
- Was the person a follower in the crime? (Mentally retarded persons are often followers rather than initiators.)
- Did the person show an unusual likelihood of confession to the crime that he was charged with? (Mentally retarded persons tend to do so.)⁹

Of course, you may encounter people who meet any or all of the above criteria but are not mentally retarded.

INTERPRETING ANY WRITTEN INFORMATION

There may be written information available on some of the people you encounter and suspect as being mentally retarded. This information may be in the form of a medical history, a family history, school records, psychological test results, clinical evaluation results, referral reports, community agency records, a prosecuting attorney's file, or a presentence report. The following points should be kept in mind when interpreting any of this information:

- Little faith can be placed in IQ scores of adults that were obtained when the adult was a child. Old scores are unreliable for indicating a person's present ability (*refer to Chapter 1*).

- Intelligence scores give little indication of a person's "street" knowledge and ability.
- Some individuals are incorrectly labeled as mentally retarded. This can be damaging to a person. Therefore, caution should be exercised in the acceptance and use of this label.
- It is quite possible that a person can be mildly retarded and have gone unnoticed as such up to the point you encounter him.
- Assistance by a community mental retardation agency in interpreting any information can be helpful and should be sought.¹⁰

KEY QUESTIONS TO ASK

Often time does not warrant an elaborate investigation, and written information is either nonexistent or unavailable. Under such circumstances the following key questions should be addressed to a person you suspect may be mentally retarded:

- Have you ever been in special education classes or classes for slow learners?
- Have you ever been in a work training program run by the Bureau of Vocational Rehabilitation (BVR) or in a sheltered workshop?
- Have you ever lived in a facility for the mentally retarded?
- Have you ever been called mentally retarded or been told that you have learning problems?¹¹

Positive responses to these questions indicate the possibility of mental retardation and demand a more in-depth investigation.

FALSE CONCLUSIONS

The conclusion (based on the factors and questions mentioned above and any written information) that a person may be mentally

retarded may be false. As important as it is to be able to recognize when a person is mentally retarded, it is equally as important to be able to recognize when a person is not mentally retarded — even though signs may point toward the former conclusion. People with developmental disabilities other than mental retardation, people suffering from mental disorders, people with certain health problems and handicaps, people who are drug and alcohol abusers, and people who are trying to "beat the system" are sometimes mistaken for being mentally retarded.

People With Other Developmental Disabilities

Federal legislation (P.L. 95-602) defines the term developmental disability as a handicapping condition with the following components:

- attributable to a mental or physical impairment or combination of mental and physical impairments;
- likely to continue indefinitely;
- results in substantial functional limitations in three or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency;
- reflects the person's need for special, interdisciplinary, or generic care, treatment, or other services that are life-long or of extended duration and are individually planned and coordinated.¹²

Mental retardation is a developmental disability. Epilepsy and cerebral palsy are also developmental disabilities and are sometimes mistakenly confused with mental retardation (*see below*). Autism is a developmental disability rarely encountered or recognized by criminal justice personnel (*refer to the Glossary*). Dyslexia is considered by some to be a developmental disability but not by others. It may be frequently encountered but is rarely recognized by criminal justice personnel (*refer to the Glossary*).

Epilepsy is a term used to denote a variety of disorders of the central nervous system characterized by abnormal electric-chemical discharges in the brain. Approximately four million people in the United States have epilepsy. Although in 25-50 percent of all cases the cause is undetermined, epilepsy can result from brain injuries during the prenatal or perinatal periods, poor nutrition or fevers during childhood, infectious diseases, brain tumors, and other brain defects. Epilepsy is not curable, but treatment is available through the use of drugs. In some epileptic persons, the disorder can eventually dissipate with age.

In epilepsy the electric-chemical discharges of the brain are manifested in various forms of physical activities called seizures. An epileptic seizure is an unpredictable, involuntary, temporary, active disturbance of brain function. In a grand mal seizure, which can last a few minutes, the person loses consciousness and may have convulsions. In a petit mal seizure, which lasts from 5-20 seconds, the person may experience a momentary loss of consciousness but not even know it. Psychomotor seizures, which can last from minutes to hours, take many forms — chewing, lipsmacking, staring, confusion, aches, ringing ears, dizziness, fear, or anger — and amnesia of the seizure is common. When an epileptic person has a seizure he may appear retarded to the unknowledgeable person.¹³

Cerebral palsy is the general term applied to a group of permanently disabling symptoms resulting from damage to the developing brain that may occur before, during, or after birth. It is a group of medical conditions, not a disease, characterized by motor dysfunction. Cerebral refers to the brain and palsy refers to the lack of control over muscles. An estimated 750,000 persons in the United States have cerebral palsy. About 15,000 babies are born annually with the disability (about one in 200 live births). Although cerebral palsy cannot be cured, it is neither progressive nor fatal. It can be treated through training to maximize functional capability. Sometimes people with cerebral

palsy are mistakenly labeled as being mentally retarded because of their handicaps.¹⁴

People With Mental Disorders

Mental retardation must not be equated with mental disorders (*refer to Chapter 1*). What the two conditions have in common is the word "mental." Otherwise, there is little similarity.¹⁵ The problems that mentally retarded persons have in adjusting to society are related to their lowered ability to learn or comprehend. Mentally disordered persons, however, may have difficulty in coping with life's stresses and problems. Their intellectual functioning prior to their coping difficulties may have been normal.¹⁶

The mentally retarded person generally shows evidence of his permanent problem at birth or during the first 18 years (the developmental years) of life. This is in contrast to the mentally disordered person whose difficulties may be temporary and may occur at any time in life.¹⁷

Treatment of mentally retarded persons is geared toward developing their highest potential in the activities of daily living and is generally a matter of education and training. Treatment of mentally disordered persons is primarily a medical/psychiatric concern. Mentally retarded persons are not sick by virtue of their retardation. And their deficits are not subject to cure (although they can achieve greater potential) as may be the problems of the mentally disordered.¹⁸

Of course, a person who is mentally retarded may become mentally disordered (the term for this condition is dual diagnosis), but such problems neither inevitably occur together nor cause each other. All of us are subject to the same illnesses, and, just like anyone else, a mentally retarded person may become mentally disordered, or he may have no mental health problems.¹⁹

Sometimes individuals who are mentally disordered may be mistakenly diagnosed as mentally retarded. This can occur when they are tested, and, because their disorder affects

their intellectual functioning and adaptive behavior, they score in the range of mental retardation. With psychiatric treatment, however, they can improve on the tests.

People With Certain Health Problems and Handicaps

When diabetic persons lack insulin they may go into diabetic shock, and this can make them disoriented and groggy. An untrained person may mistake them as being mentally retarded.²⁰

Deaf people who are unresponsive to commands or questions are sometimes mistaken as being mentally retarded.²¹

People Who Are Drug and Alcohol Abusers

Drug abusers and alcoholics may appear disoriented, act illogically, and be unresponsive to commands or questions. Therefore they may be mistaken as being mentally retarded.²²

People Who Are Trying To "Beat The System"

Some people pretend to be mentally retarded when they actually are not. They do so because they think that the criminal justice system is more lenient with retarded offenders than with nonretarded offenders.

Tony: A Case Example of Trying to Beat the System

Tony was 24 years old when he was arrested and charged with carrying a concealed weapon, two counts of kidnapping, and two counts of rape. The records revealed that he had a juvenile history of delinquency and theft as well as a history of drug and alcohol abuse. As a child he was physically and emotionally neglected.

When he was 14 years old and involved in criminal activities, Tony was institutionalized by the Ohio Youth Commission in a facility for the mentally retarded. Intelligence testing prior to the institutionalization found Tony to be mildly mentally retarded. Personality testing using the Minnesota Multiphasic Personality Inventory (MMPI) showed significant elevations on Scales 8 and 4, indicating emotional problems. Testing during the institutionalization found Tony not to be mentally retarded but emotionally deprived and behaviorally disturbed.

At the time of his arrest ten years later, the court psychologist found Tony

to be moderately retarded. Blunting of intellectual and emotional functions due to drug and alcohol abuse was also noted. The recommendation was made that Tony be found incompetent to stand trial.

The court did determine that Tony was incompetent to stand trial and remanded his case to the probate court for disposition. The probate court notified the Division of Mental Retardation to make arrangements for placement. The Division had a psychologist review Tony's records and make an assessment so placement could be determined.

Upon being told by the psychologist that he had been found incompetent to stand trial, Tony began to improve on the tests. His intellectual functioning was substantially greater.

At a later date, the court placed Tony in a facility for the mentally disordered after deciding that Tony had been manipulating the tests.

Summary

- *Certain factors (communication problems, attention span and memory difficulties, social behaviors and interactions, task performance, educational background, vocational experience, physical appearance, and childhood history) may be helpful in determining whether a person may be mentally retarded. These factors must be viewed as a whole, however, for rarely will just one or two of them alone point to retardation.*
- *Certain factors must be considered when looking at the circumstances of a crime involving a person you suspect may be mentally retarded.*
- *Caution should be exerted when interpreting any available written information about a person you suspect may be mentally retarded.*
- *When an elaborate investigation is impossible (due to time constraints and other reasons) and written information is either non-existent or unavailable, certain questions should be addressed to a person you suspect may be mentally retarded. These questions pertain to the person's education, vocational training, living arrangements, and self-concept.*
- *The conclusion that a person may be mentally retarded is sometimes false. People with developmental disabilities other than mental retardation (such as epilepsy and cerebral palsy), people suffering from mental disorders, people with certain health problems and handicaps (such as diabetes and deafness), people who are drug and alcohol abusers, and people who are trying to "beat the system" are sometimes mistaken for being mentally retarded.*
- *Only comprehensive examinations and tests by qualified individuals can determine whether a person is mentally retarded. Thorough personal histories and tests of intelligence, ability, and skill are absolutely necessary.*

Notes

1. Miles B. Santamour and Bernadette West, *Retardation and Criminal Justice: A Training Manual for Criminal Justice Personnel* (New Jersey: President's Committee on Mental Retardation and New Jersey Association for Retarded Citizens, September 1979), p. 18; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2; James Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole* (Huntsville, Texas: Criminal Justice Center of the Sam Houston State University, 1978), pp. 28-29; Kenneth S. Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender* (South Carolina: Statewide Technical Assistance and Training Project, University Affiliated Facilities, University of South Carolina, 1979), p. 17.
2. Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, pp. 29-30.
3. Santamour and West, *Retardation and Criminal Justice*, p. 18; Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, p. 30; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2.
4. Committee for the Developmentally Disabled Alleged Offender, *Developmental Disabilities: A Training Handbook for Law Enforcement Officers* (Los Angeles: County Regional Centers), p. 3; National Association for Retarded Citizens Research and Demonstration Institute, *Guidelines for Local and State ARC Units: Police Training in the Recognition and Handling of Retarded Citizens* (Arlington, Texas); Santamour and West, *Retardation and Criminal Justice*, p. 18; Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, p. 29; Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 19.
5. Committee for the Developmentally Disabled Alleged Offender, *Developmental Disabilities: A Training Handbook for Law Enforcement Officers*, p. 3; National Association for Retarded Citizens Research and Demonstration Institute, *Guidelines for Local and State ARC Units: Police Training in the Recognition and Handling of Retarded Citizens*; Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, pp. 28-29; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2; Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 17.
6. Santamour and West, *Retardation and Criminal Justice*, p. 18; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2.

Notes

7. National Association for Retarded Citizens Research and Demonstration Institute, *Guidelines for Local and State ARC Units: Police Training in the Recognition and Handling of Retarded Citizens*; Santamour and West, *Retardation and Criminal Justice*, p. 17; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2; Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 16.
8. Santamour and West, *Retardation and Criminal Justice*, p. 17; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2.
9. Santamour and West, *Retardation and Criminal Justice*, p. 19; Massachusetts Bar Association, *Criminal Procedures Reference Manual for Mentally Retarded Offenders*, p. 2; Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 18.
10. Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, pp. 51-54; Bernice Beilin, May 13, 1980 Correspondence.
11. Mental Development Center, Cleveland, Ohio.
12. Ohio Department of Mental Health/Mental Retardation and Ohio Developmental Disabilities Planning Council, *Reporter's Quick Guide: A Complete Reference for Stories on Developmental Disabilities, State of Ohio* (Columbus, Ohio: 1979), p. 3.
13. *Ibid.*, pp. 4-5; Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 4.
14. *Ibid.*, pp. 5-6; *Ibid.*, p. 3.
15. Committee for the Developmentally Disabled Alleged Offender, *Developmental Disabilities: A Training Manual for Law Enforcement Officers*, p. 12.
16. Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole*, p. 21.
17. *Ibid.*, p. 22.
18. Committee for the Developmentally Disabled Alleged Offender, *Developmental Disabilities: A Training Manual for Law Enforcement Officers*, p. 12.
19. *Ibid.*
20. Hoffman, *The South Carolina Law Enforcement Officers Guide to the Recognition and Handling of the Developmentally Disabled Offender*, p. 15.
21. *Ibid.*
22. *Ibid.*, p. 14.

4 Interviewing Mentally Retarded Offenders

Professionals within the justice system, including police officers, attorneys, judges, probation officers, and parole officers, are likely to interview mentally retarded offenders in the course of their work.

The purposes of interviews with mentally retarded offenders, as with any offenders, may differ. Some interviews, such as those conducted by police officers during an initial encounter, are for gathering information for immediate use. Other interviews, such as those conducted by attorneys during the preparation of a case, are conducted to obtain information for planning purposes. Finally, there are counseling interviews, such as those conducted by probation and parole officers in case supervision (*refer to Chapter 7*).

POLICE OFFICERS' INITIAL ENCOUNTERS

Often the police officer is the first professional to encounter mentally retarded offenders. It is important for the police officer to remember that sometimes mentally retarded persons may be encountered in what might seem to be criminal circumstances but actually are not. For example, a mentally retarded person may be caught with the "goods" near the scene of a burglary only because the actual criminal, while fleeing, spotted him and left him with the evidence. Or a mentally retarded person may be reported as vagrant or a public nuisance because of his over-friendliness toward strangers who do not understand the retarded person's intense need to be liked or accepted.

Or purely innocent attempts to communicate or play with children may be mistaken as acts of sexual deviance.¹

In these initial encounters, it is important for the police officer to be able to identify the person as possibly being mentally retarded. The police officer must then determine whether to arrest him or contact his family or mental retardation service providers. Suggestions for questions to ask and behaviors to look for are provided in Chapter 3.

INTERVIEWING TECHNIQUES

The following techniques ideally should be used in interviews with offenders who have been identified as mentally retarded:

- **Arrange the Setting** - The interviewer should arrange for a private, quiet setting for the interview. The setting itself determines the tone for the interview. A private, quiet setting is conducive to a successful interview whereas one that is not private or quiet may hamper the interview.
- **Identify Yourself** - The interviewer should clearly identify himself and let the person know what his role is, what the person can expect from him, and what he expects from the person.
- **State the Purpose** - The interviewer should state the purpose of the interview. A mutual understanding of the purpose

at the outset generally helps to facilitate the interview. The interviewer should also take responsibility for adhering to the stated purpose of the interview.

- **Speak Slowly and Distinctly, Use Simple Language, and Repeat Information** - The interviewer must remember that mentally retarded persons can usually comprehend concepts and facts if they are presented in a clear, simple way. Technical and professional jargon should be avoided. If the interviewer is not sure whether he has gotten his point across, he should repeat it or ask the person to state it in his own words.
- **Use Visual Aids** - The interviewer should use pictures and diagrams if the person does not comprehend verbal or written language.
- **Observe Nonverbal Behavior** - The interviewer should observe the person's physical behavior. A person's body language often supplements and sometimes even belies what he is saying.
- **Listen to What is Said and What is not Said** - The interviewer should listen closely, both to what the person says and to what he does not say. The person may omit the most significant portion of his story out of embarrassment, fear, or the desire to please the interviewer.
- **Ask Questions** - The interviewer should keep in mind that there are two types of questions: close-ended and open-ended. Close-ended questions intend to elicit specific facts or yes/no responses (such as, What is your address? Are you looking for work?). Open-ended questions, on the other hand, stimulate the person to talk freely and avoid the pitfall of putting words into his mouth (such as, What is your version of the story?).

- **Watch for Overcompliance** - The interviewer should always be aware that mentally retarded persons frequently give responses to gain acceptance. It is important that the interview be conducted so as not to lead the person to certain responses.
- **Watch for Resistance** - The interviewer should remember that there is a large amount of socially sanctioned authority, both actual and delegated, on the part of the interviewer. The interviewer should be comfortable with his authority, but use it with restraint. The nonvoluntary quality of interviews with offenders requires the ability to counter resistance. Following are typical reactions of persons resistant to being interviewed:
 - silence,
 - verbalized hostility,
 - overcompliance,
 - hero worship,
 - grandiose expectations,
 - "putting the interviewer on,"
 - excessive agreeableness,
 - insignificant content,
 - retreating into humor.²

Summary

- *Interviews with mentally retarded offenders may be conducted to obtain information for immediate use, to obtain information for planning purposes such as preparing a court case, or to counsel.*
- *In initial encounters the police officer must be able to determine whether the person may be mentally retarded. If so the police officer must decide whether to arrest him or contact his family or mental retardation service providers. For more information refer to Chapter 3.*
- *Ideal interviewing techniques for mentally retarded offenders include a private, quiet setting, a clear identification of the interviewer, a stated purpose of the interview, the use of simple language and repetition of information, and the use of visual aids. In addition, the interviewer should observe nonverbal behavior, listen to what is said and not said, ask questions, and watch for overcompliance and resistance.*

Notes

1. Committee for the Developmentally Disabled Alleged Offender, *Developmental Disabilities: A Training Handbook for Law Enforcement Officers* (Los Angeles: County Regional Centers), pp. 9-10; James Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole* (Huntsville, Texas: Criminal Justice Center of Sam Houston State University, 1978), p. 31.

2. Annette Garrett, *Interviewing: Its Principles and Methods* (New York: Family Services Association of America, 1970); Robert B. Mills, *Offender Assessment: A Casebook in Corrections* (Anderson Publishing Co., 1980), pp. 45-50.

5

Assessing the Case

Professionals within the justice system routinely gather and analyze information to help them decide how to handle their cases. For the purpose of this Handbook, this process will be referred to as assessing the case.

Police officers must make quick assessments of cases concerning mentally retarded offenders. But other professionals within the justice system may take an in-depth look at both the legal and social dimensions of such cases. The legal dimension refers to the person's prior record and the severity of the current offense. The social dimension concerns the person's social history and current circumstances. An assessment of the factors in each dimension may be predictive of the mentally retarded offender's habilitative success in the community.

Once an offender has been identified as mentally retarded, the information needed to conduct an in-depth assessment may be obtained from a variety of sources. The sources include a medical history, a social history, school records, psychological test results, clinical evaluation results, referral reports, community agency records, a prosecutor's file, or a presentence report. In addition, interviews with the mentally retarded offender and other persons who know him will provide information for assessing the case (refer to Chapter 4).

The following checklist was devised for use by attorneys, judges, probation officers, and parole officers. It identifies the key legal and social factors to consider when dealing with

mentally retarded offenders. Note that the checklist is intended to be a guide. There is no intention to specify which factors carry more or less weight.¹

LEGAL DIMENSION CHECKLIST

- (1) **Current Offense**
 - A. How serious is the current offense?
 - B. Was a weapon used?
 - C. Is the offense probationable?
- (2) **Mentally Retarded Offender's (MRO) Involvement in the Current Offense**
 - A. Did the MRO initiate the crime?
 - B. Was the MRO a follower in the crime?
- (3) **Damage**
 - A. What was the damage to the victim?
 - B. What was the damage to society?
- (4) **MRO's Explanation**
 - A. How contrite is the MRO about committing the crime?
 - B. Did the victim precipitate the crime?
- (5) **Codefendant's Explanation** (if applicable)
- (6) **Victim's Statement** (if applicable)
- (7) **Prior Record**
 - A. What is the MRO's prior juvenile record?
 - B. What is the MRO's prior adult record?
 - C. Has the MRO ever before been accused, arrested, or incarcerated?

SOCIAL DIMENSION CHECKLIST

(1) Level of Mental Retardation

Knowing the person's level of mental retardation (*refer to Chapter 1*) provides a basis for determining the type of habilitation needed.

(2) Other Handicapping Conditions

- Does the MRO have another developmental disability?
- Does the MRO have mental health problems?
- What is the degree of alcohol consumption?
- What is the degree of drug use?
- Does the MRO have health problems?

(3) Social Behavior

- Does the MRO have supportive family or substitute family relationships?
- Does the MRO have supportive friendships?

(4) Level of Cooperation

- Is the MRO cooperative with law enforcement officials?
- Is the MRO cooperative with family or substitute family members?
- Is the MRO cooperative with treatment providers?

(5) Academic/Vocational Skills

- Can the MRO read?
- Can the MRO write?
- Does the MRO have good motor skills (coordination)?
- Does the MRO have good math skills (such as the ability to make change, keep time, read a calendar)?

(6) Education

- Was the MRO enrolled in special education classes?
- If so, did he:
 - graduate?
 - drop out?
 - get expelled?

(7) Prior Institutionalization

- At what age was the MRO first institutionalized?
- What was the length of institutionalization?
- Were past adjustments to correctional institutions good?
- If not,
 - was the MRO an aggressor?
 - was the MRO a victim?
 - did the MRO display acting out behavior?
 - did the MRO display withdrawn behavior?
- Were past adjustments to mental health or mental retardation institutions good?
- If not,
 - was the MRO an aggressor?
 - was the MRO a victim?
 - did the MRO display acting out behavior?
 - did the MRO display withdrawn behavior?
- What were the circumstances surrounding discharge?

(8) Mental Health Treatment

- Was the MRO ever in mental health treatment?
- If so,
 - for how long?
 - was it successful?
 - was it terminated?
- Is the MRO presently in mental health treatment?
- If so,
 - for how long?
 - where?
 - what is the type of therapy?
 - what is the prognosis?

(9) Residence

- In past living situations did the MRO live
 - alone?
 - with a spouse?
 - with parents?
 - with other relatives?

- with friends?
 - in a halfway house?
 - in a group home?
 - in a foster home?
 - in an institution?
- What are the MRO's current living arrangements?
 - What are the MRO's prospective living arrangements?
 - What are the MRO's concerns and desires relating to living arrangements?
 - Does the MRO indicate a willingness to cooperate in planning for residential placement?

(10) Vocational Training

- Did the MRO receive vocational training in the past?
- What type of training was it?
- To what extent was the MRO trained?
- Was the training completed?
- If the training was not completed,
 - did the MRO leave on his own?
 - was the MRO asked to leave?
- Is the MRO currently enrolled in a vocational training program?
 - If yes, which program?
 - If no, is the reason that he is either ineligible or unmotivated? Or is no program available?
- Does the MRO have the opportunity for vocational training?
 - If yes, which program?
 - If no, is the reason that he is either ineligible or unmotivated? Or is no program available?

(11) Employment

- What is the MRO's employment history?
- Is the MRO currently employed?
- Do any of the following factors involving employment problems apply to the MRO:
 - family problems?
 - emotional instability?
 - low motivation?
 - low self-esteem?

- lack of training, education, or skills in applying for, obtaining, or maintaining employment?
- physical handicaps?

(12) Income/Financial Management

- What is the MRO's source of income?
- How much is the MRO's monthly income?
- What are the MRO's monthly expenses?
- How much are the MRO's monthly expenses?
- What are the MRO's assets and liabilities?
- Has the MRO ever been garnisheed, bankrupt, or had other financial problems?
- Is the MRO capable of managing his own money?

(13) Medical Care

- Does the MRO presently take any medications?
- Is the MRO currently under the care of a physician, psychiatrist, or psychologist?

CASE EXAMPLE

The following case example is a 22-year-old, single, male mentally retarded offender. The checklists were used by the probation officer conducting the presentence investigation to assess the case and make recommendations to the court.

Legal Dimension

- Current Offense** - Breaking and entering.
- MRO's Involvement in the Current Offense** - He was with three other men who are approximately his age. They are charged with the same offense.
- Damage** - There were no victims. The property damage amounts to \$350.

- *MRO's Explanation* - He states that he did not do anything wrong. He explains that he was "just with the guys" and did not realize they were committing a crime.
- *Codefendants' Explanation* - All three codefendants state that the MRO participated equally in the crime.
- *Victim's Statement* - N/A.
- *Prior Record* - His juvenile record consists of one arrest and release. His adult record included two arrests and convictions for breaking and entering.

Social Dimension

- *Level of Mental Retardation* - A recent clinical evaluation found him to be functioning in the mild range of mental retardation. Five years ago he tested in the moderate range of mental retardation.
- *Other Handicapping Conditions* - N/A.
- *Social Behavior* - Family relationships are nonsupportive. He does not communicate with his father who divorced his mother 14 years ago. He sees his older sister occasionally, but she will not accept responsibility for him. His only friends are the men with whom he committed the crime.
- *Level of Cooperation* - During the presentence investigation he was cooperative with the probation officer and the psychiatric clinic staff.
- *Academic/Vocational Skills* - He reads and writes at a third grade level. His motor skills are adequate. He has difficulty in telling time and reading the calendar.
- *Education* - He attended high school until the 11th grade when he dropped out. He was enrolled in special education classes the last three years of school.

- *Prior Institutionalization* - Two years ago he was incarcerated in the county jail for eight months. His adjustment was generally good. His behavior was cooperative yet withdrawn and nervous at times. He went through brief periods of verbally threatening other inmates. But, when admonished by the staff, he stopped. He told the staff he feared being sexually molested by other inmates although there was no evidence that such attempts were made. There is no history of placements in other institutions.
- *Mental Health Treatment* - N/A.
- *Residence* - He lived with his mother until her death seven years ago. Upon her death he moved in with his grandmother. He remained there for two years and then left because she was "too strict." For the past five years he has lived intermittently with relatives and friends. At present he is awaiting sentencing in the county jail. Prospective living arrangements may include a group home for the handicapped or a halfway house although, as yet, neither has made a decision on whether to accept him.
- *Vocational Training* - He has never received vocational training, but he is eligible for training at the Bureau of Vocational Rehabilitation.
- *Employment* - He has held two jobs in the past. At age 18 he worked as a busboy for six months when he was fired for unsatisfactory work. His next job, at age 19, also was as a busboy. It lasted three months when he was fired for not reporting to work regularly. The prospects for future employment are poor at this time due to his poor work record, lack of training, and minimal vocational/academic skills.

- *Income/Financial Management* - He presently has no income because he is incarcerated. He has no assets or liabilities and has never been garnisheed or bankrupt.

Analysis of the Case

- Although the current offense is a repeat offense, it did not involve a victim and the damages amounted to \$350.
- It is not certain whether he initiated the crime. He states that he did not realize he was involved in a crime. His codefendants state that he was aware of the criminal activity.
- His prior offenses consist of crimes against property.
- He is mildly mentally retarded (this level has the greatest potential for the development of social and vocational skills).
- His family relationships are poor.
- The persons identified as his friends seem to have a negative influence on him.
- He was cooperative during the presentence investigation.
- He possesses minimal academic and vocational skills. That he is mentally retarded was not detected by the school system until he reached high school. He had only three years of school programming appropriate for his level and capacity to learn.
- He has no definite living arrangements.
- He is eligible for vocational training.
- He has a poor work record.
- He has no source of income.
- He has no financial obligations.

Formulating A Plan

Some of the above factors are conducive to this mentally retarded offender's habilitation (such as his cooperation during the presentence investigation). But other factors would constrain such habilitation (such as his poor work record). Perhaps some of the constraining factors can be corrected with the help of the probation officer through a carefully developed habilitation plan (*refer to Chapter 7*). A plan for this case example might include the following:

- placement by the probation officer in a supervised group home that offers opportunities for him to develop supportive friendships;
- enrollment with the help of the probation officer in a prevocational training program where he can learn job readiness skills;
- subsequent enrollment in a vocational training program where he can learn work skills;
- assistance by the vocational training program and/or the probation officer in obtaining employment upon completion of the training;
- counseling by the probation officer or another service provider on financial management;
- restriction from associating with the other men involved in the crime;
- a discussion of all of the above and other issues that may arise with the probation officer in weekly conferences. (Remember it takes more time to effectively help a mentally retarded person develop his potential. *Refer to Chapter 1.*)

Summary

- *Police officers must make quick assessments of cases concerning mentally retarded offenders. But other professionals within the justice system may take an in-depth look at both the legal and social dimensions of such cases.*
- *The legal dimension refers to the person's prior record and the severity of the offense.*
- *The social dimension concerns the person's social history and current circumstances.*

Notes

1. Margaret Kennedy, Mentally Retarded Offender Project, Cleveland, Ohio; William Kroman, Cuyahoga County Adult Probation Department; Bernice Beilin, correspondence of May 13, 1980.

6

Preparing the Court Case and Determining Its Disposition

The issues to be covered in this chapter are the effects of mental retardation on the following:

- competence to stand trial,
- guilty pleas,
- criminal responsibility,
- out of court statements,
- criminal intent,
- sentencing.

For a general discussion, see Howard S. Alperin et al., "Representation of a Mentally Retarded Criminal Defendant," *Massachusetts Law Review* (June - August 1979): 103-20.

Before addressing these issues, two questions must be answered:

- What are the legal and treatment implications of mental retardation?
- How can a mentally retarded defendant and his level of retardation be identified?

WHAT ARE THE LEGAL AND TREATMENT IMPLICATIONS OF MENTAL RETARDATION?

For the court, mental retardation has two sets of implications. One relates to legal issues that may be raised in the process of criminal adjudication. The other relates to eligibility for publicly financed treatment services—especially residential services.

For example, the court's decision on a particular issue may result in the removal of an

individual from the criminal justice system because of his mental retardation. But the individual will not necessarily be eligible for residential supportive services from the state mental retardation system. Thus if the individual is awaiting trial and has no place to live or is unable to support himself, a discharge from the criminal justice system may leave the individual without special support from the state mental retardation system. This results because the state uses an IQ of 55 as the cut-off point for eligibility for residence in state hospitals, group homes, or subsidized apartments. A mentally retarded individual whose IQ is over 55 will generally not be accepted into such facilities even though his mental retardation may contribute substantially to his delinquent behavior.

Eligibility for mental retardation services from the Ohio Department of Mental Retardation and Developmental Disabilities derives from Ohio Revised Code (ORC) Chapter 3123. This chapter governs civil commitment of the mentally retarded. Its definitions of mental retardation are based on the APA/AAMD standards as described in Chapter 1 of this Handbook. These are the standards of the American Psychiatric Association that were written in accordance with the terminology and classification of the American Association on Mental Deficiency. Pursuant to ORC section 5123.01(L) (1,2), a "mentally retarded person subject to institutionalization by court order" means the following:

- (1) A person who is at least moderately mentally retarded and, because of his retardation, represents a very substantial risk of physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his most basic physical needs and that provision for such needs is not available in the community.
- (2) A person who is at least moderately retarded and, because of his retardation, needs and is susceptible to significant habilitation in an institution.

ORC section 5123.01(M) defines a "moderately mentally retarded person" as follows:

A person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the manual of terminology and classification in mental retardation, 1973 revision, American Association on Mental Deficiency publication.

The mildly mentally retarded person is not subject to state hospitalization or institutionalization, although he may be eligible for non-residential services. Persons functioning on measured intelligence in the borderline range have difficulty gaining any specialized services.

HOW CAN A MENTALLY RETARDED DEFENDANT AND HIS LEVEL OF RETARDATION BE IDENTIFIED?

A lay person may suspect possible mental retardation in a defendant from factors such as the individual's speech, response to questions, and involvement in special education classes for slow learners (refer to Chapter 3).

Confirmation of mental retardation and the level of retardation requires psychological testing. Such testing is available from court psychiatric clinics, the regional offices of the Ohio Department of Mental Retardation and

Developmental Disabilities, private agencies specializing in mentally retarded persons, and individual psychologists and psychiatrists.

Programs providing help to mentally retarded persons often require assessments by their own professionals who specialize in the problems of retarded persons. Thus an assessment by a forensic center may only be a preliminary indication of a defendant's eligibility for treatment, particularly residential treatment, at public expense.

COMPETENCE TO STAND TRIAL

Statutory Law

ORC sections 2945.37, 2945.371, and 2945.38 govern the issue of competence to stand trial. ORC section 2945.37 states the following:

A defendant is presumed competent to stand trial unless it is proved by a preponderance of the evidence in a hearing under this section that because of his present mental condition he is incapable of understanding the nature and objective of the proceedings against him or of presently assisting in his defense.

The court may not find a defendant incompetent solely because he is receiving or has received treatment as a mentally disordered patient or a mentally retarded resident (ORC section 2945.37).

ORC section 2945.38 (A, B, C, D) specifies the options the court has at the competence hearing:

- (A) If the court finds that the defendant is competent to stand trial, he shall be proceeded against as provided by law.
- (B) If the court finds that the defendant is incompetent to stand trial, it shall also make a finding based on the evidence as to whether there is a substantial probability that the defendant will become competent to stand trial within one year, if provided with a course of treatment.

(C) If the court finds that the defendant is incompetent to stand trial and that, even if he is provided with a course of treatment, there is not a substantial probability that he will become competent to stand trial within one year, and if it appears to the court, through a review of the report of an examiner or otherwise, that the defendant is mentally retarded, the court shall cause an affidavit to be filed in the probate court alleging that the defendant is a mentally retarded person subject to institutionalization by court order, as defined in ORC sections 5123.67 to 5123.71.

(D) If the court finds that the defendant is incompetent to stand trial and it appears to the court, through a review of the report of an examiner or otherwise, that the defendant is mentally retarded but that there is a substantial probability he will become competent to stand trial within one year if provided with a course of treatment, and the offense is one for which the defendant could be incarcerated if convicted, it shall order the defendant to undergo treatment at a facility operated by the department of mental retardation or at a facility certified by the department to diagnose mental retardation, at a public or private community mental retardation facility, or with a private psychiatrist or other mental retardation professional.

Although ORC section 2945.38(C) provides for filing an involuntary commitment application under ORC sections 5123.67-71, a person who is incompetent to stand trial may not in fact meet the civil standards for involuntary institutionalization (for example, if his IQ is greater than 55).

In addition, although ORC section 2945.38(D) contemplates that the State of Ohio operates programs designed to enable mentally retarded individuals to become competent to stand trial, that is largely untrue.

Such treatment would essentially involve education in understanding the court process and in developing communication skills relevant to trial testimony or consulting with counsel. But no specialized programs exist for such purposes, and any treatment would have to be designed ad hoc to meet the needs of a particular defendant in a particular case.

Case Law

In *Jackson v. Indiana*, 406 U.S. 715 32 LEd2d 435, 92 S. Ct. 1845 (1972), the court held that due process is violated by a state procedure that calls for the indefinite commitment of a criminal defendant solely on account of his incompetence to stand trial. Ohio's competence statute was repealed and re-enacted in 1978 to comply with the decision.

Judge's Role

In deciding on a defendant's competence to stand trial, the judge's ultimate consideration is whether or not the defendant will receive a fair trial. That is because the competence issues of one's ability "to understand" the proceedings and "to assist" in the defense are themselves imprecise terms for which the statute offers no standard. In deciding whether the defendant has sufficient ability to understand the proceedings and to assist in his defense, the judge may want to consider the following factors:

- What are the issues to be determined at the trial?
- What is the nature of the defendant's defense?
- Can the defendant relate his version of the offense to his lawyer?
- Does the defense counsel desire the defendant to testify? If so, will the defendant be able to understand questions on direct and cross-examination and testify coherently?
- Will the defendant be able to understand the testimony of others?

- Will the defendant be able to communicate adequately with counsel during the course of the trial?
- Does the defendant understand a finding of guilty?
- Will the defendant understand that any punishment is a consequence of being found guilty?

The decision on competence, in the last analysis, is a judicial decision. It is based on whether the defendant will receive a fair trial in light of his intellectual capacity, the issues to be tried, his ability to communicate with counsel, the need for and his ability to testify, and his comprehension of the court room process. Therefore, the trial judge should not focus simply on the data and opinion of the expert witness. The judge should also focus on how he may, through the conduct of the trial and the appointment of counsel, compensate for the defendant's mental limitations to produce a fair trial. With careful and patient explanations from the judge and counsel, mentally retarded defendants who initially seem incompetent to stand trial may become quite satisfactory participants in a criminal trial. In some cases the judge might even defer his decision on the defendant's competence to stand trial until after a verdict has been reached. In that way the judge can assess in what ways, if any, the defendant's mental capacity did or did not render him incompetent to stand trial.

Defense Counsel's Role

Defense counsel must decide whether to raise the issue of competence or, if raised by the court or prosecutor, whether to oppose or acquiesce. In doing so defense counsel should consider the judge's questions listed above as well as the following issues:

- the nature and degree of the defendant's mental retardation,
- the nature of the criminal charge,
- the nature of the prosecution's case and the available defenses,

- the committability of the defendant,
- the stigma of an incompetence finding even if not committable,
- the availability of community programs if the defendant is not committable.

The stigma of an incompetence finding is of special consideration if counsel believes that his client is innocent. This is because an arrest coupled with a finding of incompetence will often be treated by agencies outside the criminal justice system as a finding of guilty. It may be especially important, therefore, that the client be found competent and thereafter be acquitted or be permitted to plead to a reduced charge. This may be particularly true when a sex offense, assault, or homicide is charged.

Information that can be useful in determining competence includes the following:

- psychological and psychiatric evaluations,
- history of placement in services for mentally retarded persons,
- information from the defendant's family and friends,
- one's own assessment of the client's ability to assist in his defense and to understand the nature of the proceedings.

Defense counsel should remember that the court may not find the defendant incompetent solely because he is receiving or has received treatment as a mentally retarded resident. Therefore, the psychiatric and psychological evaluations are of primary importance at the hearing. Counsel should be aware, though, of the limitations of these evaluations. Tests themselves can be inaccurate and the evaluator may have limited experience with mentally retarded persons. Whenever possible the evaluation should be conducted by, or at least supplemented by, the findings of a psychologist or psychiatrist with experience in the field of mental retardation.

Counsel should not overlook his own role in educating his client about court processes and his own ability to communicate with his

client. These may be of equal weight in determining competence to the evaluations by mental health professionals.

Prosecutor's Role

The prosecutor should consider the judge's questions and defense counsel's issues mentioned in this chapter. The prosecutor should especially remember the following:

- Some mentally retarded persons are competent to stand trial.
- Both psychological and psychiatric evaluations can differ in their conclusions.
- Placement in vocational, educational, or residential programs for mentally retarded persons does not necessarily signal incompetence to stand trial.
- A finding of incompetence may result in the commitment of a dangerous individual to a mental retardation facility where there are vulnerable residents and where staff lack the capacity to control the defendant.
- A finding of incompetence may result in the release of a dangerous individual to the community if the individual does not meet the civil standards for involuntary institutionalization.

GUILTY PLEAS

The Law

Criminal Rule 11 of the Ohio Rules of Criminal Procedure addresses pleas and rights upon a plea. According to Criminal Rule 11(C) (2), the court shall not accept a plea of guilty or no contest in a felony case without first addressing the defendant personally and then doing the following:

- (A) determining that the defendant is making the plea voluntarily with an understanding of the nature of the charge, of the maximum penalty involved, and if applicable, of ineligibility for probation;

(B) informing the defendant of, and determining that he understands, the effect of his plea and that, upon acceptance of the plea, the court may proceed with judgment and sentence;

(C) informing the defendant and determining that he understands that by his plea he is waiving his rights to a jury trial, to confront witnesses against him, to have a compulsory process for obtaining witnesses in his favor, to require the state to prove his guilt beyond a reasonable doubt, and to remain silent.

Rule 11(C) (2) implements the following determination in *Boykin v. Alabama*, 395 U.S. 238, 23 LEd2d 274, 89 S. Ct. 1709 (1969):

There must be an affirmative showing on the record that the guilty plea was entered voluntarily and with understanding.

It may be especially difficult to conclude that a mentally retarded person's guilty plea is being entered "voluntarily and with understanding." This is because the mentally retarded defendant may be highly suggestible and willing to do whatever his lawyer or family recommend. In addition he may have severe limitations on his ability to understand commonplace legal terms.

No Ohio court has addressed the question of how *Boykin* and Rule 11(C) (2) apply to a mentally retarded defendant. But for a general discussion, see Justice Jack D. Hays and Susan A. Ehrlich, "The Ability of the Mentally Retarded to Plead Guilty," 4 *Arizona State Law Journal* (1975): 661-76.

The majority rule in other jurisdictions requires the same level of understanding for entering a knowing and voluntary guilty plea as for being found competent to stand trial. That rationale was advanced in *People v. Herd*, 62 Ill. 2d 329, 342 N.E. 2d 34 (1976):

A finding of competence to stand trial necessarily involves a finding that, with the advice and assistance of counsel, the defendant is capable of waiving some or all of his constitutional rights, whether by a plea of guilty or during the course of his trial.

The minority view requires a greater understanding of the legal process for pleading guilty than is needed for being found competent to stand trial. In *Sieling v. Eymann*, 478 F2d 211 (9th Cir. 1973), the standard for pleading guilty is the degree of understanding that enables the defendant to make decisions of very serious import. The Ninth Circuit relied on the holding in *Westbrook v. Arizona*, 384 U.S. 150 16 LEd2d 429, 86 S. Ct. 1320 (1966), that a finding of competence to stand trial did not suffice as a finding that the defendant was competent to waive his right to the assistance of counsel at trial.

Chief Judge David L. Bazelon employed the rationale of *Sieling* and *Westbrook* in *United States v. Masthers*, 539 F 2d 721 (D.C. Cir. 1976). He held that evidence of a defendant's mental retardation creates a doubt of competence to plead sufficient to require an evidentiary hearing when the issue is raised on motions to vacate and to withdraw a guilty plea. Chief Judge Bazelon cited two traits of mentally retarded persons to support his conclusion:

- submissiveness that affects the voluntariness of a waiver,
- abstract intelligence that reflects upon the ability to understand the right.

He explained that submissiveness can be alleviated by simple, patient explanations but that low intelligence is intractable.

If pleading guilty requires a higher level of understanding than for being found competent to stand trial, then the situation is created wherein a competent defendant might not be able to avail himself of a favorable plea bargain.

The following paragraphs offer some suggestions for resolving the incongruity between questions of competence to stand trial, under ORC section 2945.37, and questions of a

knowing and voluntary guilty plea, under Criminal Rule 11(C).

Judge's Role

The possible differences in a defendant's ability to understand the court process at trial and his constitutional rights in a change of plea proceeding usually do not become apparent until the guilty plea is offered. The judge must, at that time, explain to the defendant that he waives his right to trial by jury, his rights to confront and subpoena witnesses, his right to testify or remain silent, his right to assigned counsel if indigent, his right to be present at the trial, and his right to have the state prove him guilty beyond a reasonable doubt. These are complicated concepts not easily comprehended in the abstract by a person of subaverage intelligence. Therefore the judge must be sure to explain the legal concepts in the simplest terms. The judge can make things understandable by pointing to places in the courtroom, referring to the defendant's common experiences (such as television programs about trials), and asking the defendant to give his own examples of legal concepts in terms of his own case. Many mentally retarded persons do not understand abstract terms such as "testify," "jury," or "subpoena." But these can be explained through specific examples, and many mentally retarded persons can understand such examples.

An issue that is implicit in evaluating the guilty plea, but that does not exist in the question of competence to stand trial, is whether the plea bargain is fair. To ascertain that the bargain is fair, the judge may be concerned with the following questions:

- Has defense counsel been diligent in representing the client's interest in acquittal?
- To what extent is the plea being entered for the convenience of defense counsel?
- Has the defendant been assisted in his decision by friends or relatives who are interested in preventing a wrongful conviction?

- Is the defendant's level of understanding his rights substantially different from that of other defendants who plead guilty but are not considered retarded?
- What capacity does the defendant demonstrate for using independent judgment?
- Has a thorough investigation of the case been made by defense counsel?
- What facts are in the defendant's favor?
- How strong is the state's case?

A retarded defendant may be much less likely to exercise an independent judgment. Therefore the judge must ultimately determine whether there are any aspects of the case in the defendant's favor that would make the bargain unfair.

The judge in a criminal case must weigh the fairness of the bargained plea from the defendant's perspective. He must do this just as he must decide issues of fairness in civil cases of competence to contract, duress, undue influence, or unconscionability when a mentally retarded litigant is involved. It may be important that evidence is placed on the record that the judge has explored those special factors, beyond the simple assent of the defendant. Also it should be recorded that the judge has verified the diligence of defense counsel and the fairness of the plea bargain.

A proper record should be made, the questioning of the mentally retarded defendant should be conducted in non-legal terms with specific reference to the individuals and facts of the case, and the record should reveal the bargain to be fair. Then there usually will not be a conflict between the standard of competence to stand trial and the standard for a knowing and voluntary guilty plea.

Defense Counsel's Role

Defense counsel can greatly assist a mentally retarded defendant to voluntarily and intelligently enter a plea of guilty. For example, he can arrange for the client to watch a trial and point out the roles of the jury, prosecutor,

defense counsel, and witnesses. Defense counsel should realize that words like "jury," "witness," "testify," and "judge" have limited meaning to the mentally retarded defendant unless the persons or actions that they apply to can actually be seen by the defendant.

CRIMINAL RESPONSIBILITY

Case Law

In ascertaining whether a defendant is to be deemed insane, trial courts are required to instruct the jury according to *State v. Staten*, 18 O. St. 2d. 13 at 21 (1969), as follows:

In order to establish the defense of insanity, the accused must establish by a preponderance of the evidence that disease or other defect of his mind so impaired his reason that, at the time of the criminal act with which he is charged, either he did not know that such act was wrong or he did not have the ability to refrain from doing that act.

The mentally retarded person is obviously suffering from a "defect of his mind." He may also be suffering from a mental disorder. Thus, a mentally retarded person may be both mentally disordered and mentally retarded. (Note that the American Psychiatric Association no longer uses the terms "mental disease" or "mental illness" but uses, instead, "mental disorder." This Handbook also uses "mental disorder" as the equivalent of "mental illness" and "mental disease." Refer to Chapter 1.)

Even with an IQ below 55 (the administrative standard for involuntary civil commitment), a retarded person may know that his act was wrong. On the other hand, whether mentally retarded or mentally disordered and mentally disordered, he may be incapable of knowing that his act was wrong or incapable of refraining from doing the act. The determination will depend upon all of the circumstances surrounding the act and upon the person's past history.

An allegedly criminal act may occur in an institution for the retarded, or the act may be committed by an institutionalized person while outside the institution. In such cases mental retardation professionals from the institution will often be important fact and opinion witnesses. If the defendant was not institutionalized at the time of the act, mental retardation professionals may still be important opinion witnesses.

Judge's Role / Defense Counsel's Role

Mental retardation professionals usually are not familiar with forensic terminology. Therefore it may be necessary for counsel to explain the standard for insanity carefully to the witness. And it may be necessary for the judge to monitor closely the use of terms by the witness.

When the defendant pleading the insanity defense is retarded, the judge and counsel may face a dilemma in utilizing expert witnesses. Forensic mental health experts (usually psychiatrists) are familiar with legal concepts, but they may lack substantial experience with retarded persons. Mental retardation professionals are highly knowledgeable about retardation, but they may be unfamiliar with the legal definition of insanity. It is important, therefore, that the judge and counsel be aware of the different strengths and weaknesses of witnesses from various professions. The witnesses' expertise must be qualified, and their credibility must be analyzed in a case involving a mentally retarded defendant.

OUT OF COURT STATEMENTS

Case Law

Mentally retarded individuals can voluntarily, knowingly, and intelligently waive their right to remain silent prior to appointment of counsel, but such waivers by retarded persons should be carefully scrutinized. See *People v. Turner*, 3 Ohio App2dS, 209 N.E. 2d 475 (1973); *State v. Nichols*, 3 Ohio App2d 182, 209 N.E. 2d 750 (1965); *State v. Place*, 2 5 Ohio App2d 158, 267 N.E. 2d 832, (1971).

Judge's Role

In determining whether a mentally retarded defendant has given a voluntary confession and waiver of constitutional rights, the judge should be aware of the following factors:

- the extent to which the defendant is a suggestible person,
- the extent to which the defendant, in fact, lives an independent life and normally protects his own interests,
- the extent to which the defendant can communicate clearly,
- the extent to which the defendant understands questions and can answer questions fully,
- the extent to which the defendant understands and appreciates the value of particular rights.

It may be helpful to obtain professional evaluation of a defendant's capacity to exercise independent judgment from a specialist in mental retardation.

Defense Counsel's Role

The techniques of custodial interrogation are constitutionally permissible when applied to an adult of average or above average intelligence and functioning. But they may be inadequate when applied to a mentally retarded individual. Defense counsel should be aware of this and address the issues mentioned above as well as consider the following ideas:

- the mentally retarded defendant may be more subject to intimidation than the nonretarded defendant,
- the mentally retarded defendant may automatically respond to questions with "yes" answers when he does not understand the information presented.

Defense counsel should seek assistance from mental retardation experts who can do the following:

- educate the court about mental retardation,
- explain the relationship of the intellectual and behavioral functioning of the retarded defendant to his capacity to understand and waive his constitutional rights.

Defense counsel may also use information from family or friends of the defendant and past history of placement in services for the retarded. Defense counsel must coordinate this information with the legal test for the admissibility of out of court statements before deciding whether to raise the issue.

Prosecutor's Role

When deciding on the admissibility of a confession or incriminating statements during a custodial interrogation, the prosecutor should consider the issues discussed above. At a pretrial hearing, the prosecutor has the burden of proving a knowing and intelligent waiver of constitutional rights by the defendant before any of the statements can be used against him in court. See *Lego v. Twomey*, 404 U.S. 477, 30 LEd2d 618, 92 S. Ct. 619 (1972); *Miranda v. Arizona*, 384 U.S. 436, 16 LEd2d 694, 86 S. Ct. 1602 (1966); and *Jackson v. Denno*, 378 U.S. 368, 12 LEd2d 908, 84 S. Ct. 1774, 1 ALR 2d 1205 (1964).

CRIMINAL INTENT

When a person is mentally retarded the question of whether his actions were done knowingly or with a particular purpose may be more open to doubt.

SENTENCING

Sentencing Goals

Sentencing of a mentally retarded offender should include the following considerations:

- the extent to which the defendant understands that any punishment is a consequence of his conduct,

- the extent to which the defendant's retardation was a factor in the crime,
- the need for special training or treatment,
- the need to protect the public.

The normal correctional approaches (straight probation, local jail time, or prison commitment) often are not fully appropriate in meeting the sentencing goals of mentally retarded offenders. This is because mentally retarded individuals are often easily misled and manipulated by others. Also protection of the public may require specialized treatment and residential facilities for the offender. Split sentences (some jail time and some specialized treatment or training outside of jail) are an example of an appropriate alternative for the mentally retarded offender.

The Team Approach to Sentencing and Supervising

A team approach to sentencing and supervising a mentally retarded offender is usually essential if the judge's sentencing goals are to be achieved. The team should consist of those who are evaluating the offender and making the recommendation for his disposition, a probation officer who may supervise the offender, the mental retardation professional who will have case work responsibility for the offender if given probation, and a responsible family member.

In Cuyahoga County the Probation Department has a probation officer who specializes in supervising mentally retarded offenders. That officer is available to consult with the court prior to sentence. Also in Cuyahoga County the State Department has designated a psychologist to specialize in mentally retarded offenders. That person is also available for pre-sentence conferences.

The judge must play the role of team leader or coordinator. The judge will usually find it helpful to assemble the team for a conference on or before the day of sentencing. The fundamental questions at the conference should be the following:

- What are the needs and consequences of incarceration for the public and the defendant?
- Can the defendant utilize civil treatment programs, and are they available?
- What are the specific responsibilities of the justice system personnel and the mental retardation personnel who will work with the defendant?

Probation

If probation is granted, the judge should determine what responsibility each team member will assume. The judge should also define the duties that each member will have for communicating with the others and with the court. All members of the team must understand that they are responsible to the court.

Many mentally retarded offenders are drop-outs from prior treatment programs. By using probation effectively, a judge can compel an offender to accept and carry out a treatment program.

The monthly reporting required of the probationer should reinforce the effect of the sentence. Each time the probationer reports, he should be asked to recall his crime, his court appearance, and the conditions of his probation. This, with the knowledge that if he violates a condition he will serve time in jail, should help him to comply with the law.

As a team leader, the judge must establish the following as part of the probation arrangement:

- the type of training the mentally retarded offender will receive and who will be responsible for it,
- where the person will live and who will be responsible for him,
- what the obligations of the mental retardation professionals involved in the case will be,
- what the responsibilities of the probation officer will be.

Team relationships are not easily built. Leaders of mental retardation training programs do not automatically perceive the role of the criminal court. And probation officers lack authority to require cooperation from training programs. The judge's authority and prestige are needed because the team members are carrying out the judge's orders. The judge may want to require the team members and the offender to return once or twice in open court to make progress reports. Once the judge is convinced that the probation is running smoothly, such reports can be stopped.

Incarceration

Most mentally retarded offenders do learn from being incarcerated. At the same time, however, they can become either victims or aggressors while incarcerated. They are often vulnerable to more intelligent or more physically able inmates. The sentencing judge must be especially sensitive to these and other problems in determining how long of a sentence will communicate to the defendant that crime produces punishment. Periods of brief, intermittent, local incarceration may be useful in educating the mentally retarded offender as to the consequences of criminal conduct.

Obviously, in some cases, long-term incarceration will be appropriate. In that event, those having responsibility for maintaining custody of the offender must receive all presentence information available to the judge.

Summary

- *In the criminal case, mental retardation has special implications for the ultimate adjudication of guilt or innocence, for imposing sentence, and for securing publicly financed treatment services.*
- *Very little case law addresses criminal justice issues in terms of mentally retarded defendants. Therefore lawyers and judges must largely apply general principles to whatever specialized knowledge they can acquire about the mentally retarded. A better understanding of mental retardation itself is the most important background for making legal decisions about mentally retarded defendants.*

7

Supervising and Habilitating Mentally Retarded Offenders

SUPERVISING MENTALLY RETARDED OFFENDERS

Several guidelines should be followed if a mentally retarded probationer or parolee is to be effectively supervised. These include the following:

- Retarded persons are more like you than unlike you. They are sensitive to your actions and speech. They experience the same feelings and emotions that you do.
- Approach the retarded person using average vocabulary. And always ask just one question at a time. Technical terms or complex sentences only cause confusion.
- Retarded persons are easily confused and frustrated. And they become fearful under confusion faster than other people do. You will find that the response of a retarded person will be affected by the degree of his retardation, his fears, and the way he is approached. Such a person should be handled with understanding and patience.
- A retarded person may not be able to talk in an understandable fashion. This may occur particularly when he is with strangers or is frightened. Therefore take your time in communicating with him.

- Do not assume that the retarded person learns automatically what should be done and how to do it. He may only pretend to understand the necessary procedures, rules, and regulations so that he will not appear stupid. You may need to spend a lot of time with the retarded person to ensure that he understands what is expected of him.¹

When talking to a retarded person, remember that the use of abstract words or principles must be avoided and specific examples used instead. Abstractions that need to be specified and exemplified include the following:

- unspecific time references,
- reasons for behavior,
- morals and ethics,
- logic,
- philosophical beliefs,
- legal considerations,
- common sense.

For example, instead of saying to a retarded person, "Call me in a week or so at lunch time," say, "Call me on Monday, June 1 at 12:00 noon." Do not assume that a retarded person understands anything unless it has been communicated to him in a specific manner.²

Also, stay away from emotional areas unless you are prepared to make them specific by discussing behavior. With a retarded person, you must make the transition from emotions

to behavior. Insight or common sense must be provided for the person, as described below:

Officer: You feel angry because he called you a dummy. If you hit him and start a fight, he'll hit you back and your head will hurt. The police will come and people will say bad things to you. You'll have to go to jail and you won't be able to go to your job that you like so much. So don't hit him and don't start a fight — walk away from him.³

To the extent possible, everything should be translated from the verbal context to the visual. Anything that can be done to assist the retarded person in better understanding his specific responsibilities while under your supervision should be done. For example, the following could be used:

- detailed calendars for reporting,
- city maps and transportation routes,
- visual aides.⁴

Also, the retarded person should always carry his probation officer's or parole officer's business/identification card with him, as well as something identifying himself and his developmental disability.⁵

HABILITATING MENTALLY RETARDED OFFENDERS

We have chosen to use the term "habilitation" rather than "rehabilitation" in this Handbook. Rehabilitation refers to the process of restoring the person to behaviors and values that fall within the social definition of what is acceptable. In the rehabilitation process, it is assumed that the person formerly held socially acceptable behaviors and values but temporarily laid them aside. For mentally retarded offenders, however, it cannot be assumed that they ever learned such behaviors and values. Their need may not be to relearn acceptable behaviors and values, but to make a first acquaintance with

them. The term "habilitation" therefore seems more appropriate than "rehabilitation."⁶

For the purpose of this Handbook, habilitation is defined as follows:

Habilitation is the process of determining the level of the retarded person's knowledge and skills and developing a plan that proceeds from that level toward higher levels of independence. It involves the pooling of resources and personnel to improve the person physically, mentally, socially, vocationally, and economically.⁷

Habilitation generally concentrates on re-integrating the person back into society. It includes helping with activities of daily life, vocational training and job placement, academic training, and counseling. Prior to the habilitative process, testing is necessary to determine the retarded person's intellectual functioning, adaptive behavior, and vocational potential. Throughout the habilitative process, conferences must be held for program development and problem solving.

Testing

Testing is an important starting point in habilitation. Individualized, standardized measures of both intellectual functioning and adaptive behavior must be used (*refer to Chapter 1*).

In addition, vocational evaluations can provide valuable information regarding the person's interests, work attitudes, and reactions to various work situations. They can also provide information related to manual dexterity, physical tolerance for work, and perceptual and motor abilities. Tests often used in vocational evaluation include the Purdue Pegboard Test, Crawford's Small Parts Dexterity Test, the O'Connor Finger Dexterity Test, the Stromberg Dexterity Test, the Wells Concrete Directions Test, and the Purdue Perceptual Motor Abilities Survey. These tests are often used in combination since no single test can adequately measure all of the factors involved. They should always be used in conjunction

with an evaluative interview with the retarded person.⁸

All evaluative testing — measures of intellectual functioning, adaptive behavior, and vocational interests — should be supplemented by clinical judgment and medical testing.

Conferences

Conferences among professionals in the fields of mental retardation, education, employment, social work, and others are necessary in the continuous development of an individualized, comprehensive habilitative program for the retarded person. This multi-disciplinary approach is essential in tackling the complex adjustment problems to daily living of the retarded person. Along with assistance from professionals in the various related fields, input must be obtained from the retarded person himself as well as his family and friends.⁹

Activities Of Daily Living

The major component of any habilitative program is the part that is designed to help the retarded person with activities of daily living that are necessary for independence. Note that in this role the probation or parole officer serves as a case manager rather than as an actual service provider.

The officer organizing the program for the retarded person should be aware of the different levels of abilities and skills among retarded persons. It should not be assumed that each person requires the same program with the same emphasis. For example, while some persons may need help in improving their personal grooming habits, others already may have developed such skills and may require, instead, assistance in money management. For all mentally retarded persons, large goals should be broken down into a series of smaller, doable tasks.

Components of a habilitative program include the following:

- **Grooming** — The retarded person's responsibility for his own hygiene and appearance should be developed. The social as well as medical reasons for good grooming should be stressed. Examples of what types of dress are appropriate for certain situations should be provided.
- **Laundering** — The retarded person's skills for the independent care of clothing should be developed. Detailed instructions should be provided on what can and cannot be washed, how to dry clothes, how to fold clothes, and how to iron. Use and care of washing machines and dryers should also be stressed.
- **Menu Planning, Food Shopping, And Food Preparation** — The retarded person should be taught how to plan meals, shop for food, and prepare foods. The importance of proper nutrition and a balanced diet should be stressed. Meal planning in terms of time, quality, and price should be explained. Instructions and practical experience in food purchasing and preparations should be provided. This includes teaching the person how to maintain a grocery list, compare prices, use cooking utensils, follow recipes, use measurements, employ safety measures, set a table, serve, and clean up.
- **Housekeeping** — The retarded person's skills for choosing, furnishing, and maintaining a residence should be developed. The program should include how to choose a place to live within the person's budget, how to furnish and decorate it, and how to keep it clean.
- **Budget Preparation And Money Management** — One of the major obstacles a retarded person may face in acquiring independence in the community results from a lack of skill in financial management. One method for developing this skill is to teach the person to budget

through the use of a color-coded system. The person is provided with colored envelopes, each corresponding to a major area of financial needs (such as groceries, utilities, medical insurance, rent, clothes, entertainment, and transportation). Each time the person receives a paycheck, he cashes it and places the appropriate amount of money into each envelope.

Instructions on setting up checking and savings accounts should be provided. In addition, the retarded person should be taught how to shop economically.

- **Human Sexuality, Marriage, And Family Planning** — Dating, marriage, family planning, and the care and treatment of children are matters that retarded persons may know little about. Discussion on human sexuality should include dating and the advantages and disadvantages of marriage. Information about the legal aspects of marriage, along with its emotional and social responsibilities, should be discussed. Parenthood, its responsibilities, and parent/child relationships should be explored. Regarding sexual behavior, the following topics should be discussed:

- attitudes toward sexuality,
- sex myths,
- masturbation,
- intercourse,
- conception and pregnancy,
- sterilization,
- love,
- venereal disease,
- homosexuality,
- rape,
- treatment of sexual problems,
- anatomy,
- pornography,
- affection.

- **Drug And Alcohol Education** — Uninformed retarded persons may be prime candidates for addiction. Therefore, they should be informed about the nature and effects of hallucinogens, amphetamines, barbiturates, narcotics, and alcohol.
- **Current Events** — Retarded persons may need help in understanding what is happening in the community, state, and world around them, as well as how the news affects their lives. Newspapers, magazines, and radio and television news programs are easily accessible resources. If the person has reading problems and lacks motivation to keep up with current events, the habilitator should select stories, topics, and news features for discussion and encourage the person to do the same.
- **Civil And Legal Rights** — Retarded persons have the same legal and constitutional rights as every other citizen. But they have long been subjected to discrimination. Many retarded persons have never learned about their civil and legal rights or how to use them. The person should be taught his rights, how to properly execute these rights, and where to seek assistance when his rights are violated. He should also be taught the responsibilities these rights entail.
- **Community Resources** — Upon his return to the community, the retarded person should be told where to obtain assistance. Retarded persons can be taught how to seek out and utilize social, legal, medical, psychological, and leisure time community resources.
- **Leisure Time Activities** — Retarded persons may need assistance in finding leisure time activities that they are capable of doing and that will provide them with satisfaction. The program should include hobbies, sports, and social activities within the community.¹⁰

Vocational Training And Job Placement

To get a job, a retarded person must acquire certain vocational skills. Vocational training can provide the person with an orientation to work. Also, it can assess his work-related needs, assets, and limitations. And it can encourage stable work habits and tolerance for work.

Vocational training can take place within a sheltered workshop or within competitive employment. Because of the movement away from the use of institutions for retarded persons, there has been growth in the number of community workshops for retarded people. Most larger communities and many smaller ones have these facilities. The sheltered workshop can give the retarded person an opportunity to work, serving as a stepping stone to competitive employment. Most retarded offenders are mildly retarded and do not need sheltered employment for long. However, some mildly retarded offenders do require extended placement in one of these programs.

The first step in vocational training (after testing) is an introduction or orientation for the person to the basics of work. This orientation should cover the following:

- information on job opportunities and employment procedures such as seeking jobs, being interviewed, and filling out job applications;
- information on transportation methods such as using the local transit;
- discussion on communication methods such as using the telephone and letter writing;
- discussion on good relationships with co-workers and management;
- detailed discussion on the specifics of the job, including time clocks, work hours, lunch hours, work breaks, eating areas, restrooms, locker rooms, work conduct, fire regulations, use of first aid, benefit plans, time off, and the procedure for filing grievances.

The retarded person's job placement must be carefully chosen. The selection of a job placement should be based on the retarded person's level of independent functioning. The person should be encouraged to accept work that he will enjoy and is capable of handling. It is important that the placement chosen be accepting of the retarded person's limitations and offer personalized attention. In developing the right placement, it may be necessary to begin with part-time employment. This initial placement can provide training and perhaps facilitate later advancement.

Important consideration and careful scrutiny also should be applied to the employer. Often the success or failure of a job hinges on the employer's commitment to the employee. Points to keep in mind about employers include the following:

- Avoid those situations where the employer considers hiring the retarded client as doing somebody a favor. Instead look for an employer whose interests will actually be served by the job placement. This type of arrangement will be the more permanent placement.
- Stress the retarded person's need for training and the value of promotional opportunities.
- The employer should accept the challenge of ensuring success in the placement. And he should realize that he too can gain from this employment arrangement.
- A successful job placement will be more likely if there is continuous and effective counseling for the retarded person. Follow-up contacts with the employer are also important.¹¹

Academic Training

Academic training should be made available to the retarded person. If possible the person's skills should be developed so that the person can pursue activities such as the following:

- looking for work in the classified ad sections of newspapers,
- filling out job applications,
- reading public signs,
- reading directions and following maps,
- filling out forms for assistance.

It is important, however, not to challenge the person beyond his capabilities at the time. Keep in mind that retarded persons learn at a slower pace than nonretarded persons.¹²

Counseling

The counselor for a retarded person must be able to provide support beyond what is necessary for the person who is not retarded. When providing support, however, it is important not to smother the retarded person. The counselor must ensure that the client, not the counselor, continues to do all that is possible for the client.

The counseling relationship should be based on the following considerations:

- **Every client has intrinsic human value.** With the retarded client, the counselor may find that certain underlying feelings emerge, such as exasperation and discomfort. And the counselor may be unable to identify with the retarded client. Such feelings do not indicate an inadequacy on the part of the counselor; they point to an unfamiliarity with mental retardation. The counselor should reaffirm his commitment to the value of each individual, regardless of differences and limitations.
- **Every client has the right to self-determination, within limits.** The retarded person must be allowed to make decisions for himself. To take this responsibility away from the person does not solve problems; it creates a situation of prolonged dependency. The retarded person should

be encouraged to obtain higher levels of independence and responsibility for his own life.

- **Every client has the right to experience success.** Success is extremely important for the retarded person who is used to an environment that produces failure. At times the counselor may find it necessary to manipulate the environment so that the retarded person can experience success.

The client must be convinced that the counselor is trustworthy. When the client can feel secure in the relationship, learning and behavioral change can then begin. Remember, however, that the counselor must continuously remind himself that learning takes place at a slower rate for retarded persons. He must therefore do the following:

- devote great effort to interpretation and clarification,
- be consistent with the retarded person's level of comprehension in all conversations,
- reinforce specific ideas or suggestions in succeeding interviews to ensure carry-over,
- stress abilities while helping the retarded person recognize limitations,
- use positive reinforcement, keeping in mind the retarded person's familiarity with failure and disappointment.¹³

Summary

- *Several guidelines should be followed in effectively supervising mentally retarded probationers or parolees. These mostly pertain to communication procedures.*
- *Habilitation generally concentrates on the retarded person's reintegration back into society. Included in the habilitative program are activities of daily living, vocational training and job placement, academic training, and counseling.*
- *Testing precedes the habilitative process and conferences are held throughout the process.*

Notes

1. James Barrum et al., *Mentally Handicapped Offender Training Program for Probation/Parole* (Huntsville, Texas: Criminal Justice Center of Sam Houston State University, 1978), pp. 62-63.
2. *Ibid.*, p. 64.
3. *Ibid.*
4. *Ibid.*, p. 66.
5. Cuyahoga County Probation Department, March 19, 1980 meeting.
6. Miles B. Santamour and Bernadette West, *Retardation and Criminal Justice: A Training Manual for Criminal Justice Personnel* (New Jersey: President's Committee on Mental Retardation, New Jersey Association for Retarded Citizens, September 1979), p. 25.
7. *Ibid.*
8. *Ibid.*, pp. 25-26.
9. *Ibid.*, p. 27.
10. *Ibid.*, pp. 27-32.
11. *Ibid.*, pp. 32-34.
12. *Ibid.*, pp. 34-35.
13. *Ibid.*, p. 35.

Glossary

AAMD — American Association for Mental Deficiency.

adaptive behavior — The effectiveness with which an individual meets the standards of personal independence and social responsibility expected of his age and cultural group. Deficits or impairments in adaptive behavior are one of three criteria (the other two being significantly subaverage general intellectual functioning and onset during the developmental period) that must be met for a person to be diagnosed as mentally retarded.

American Association for Mental Deficiency (AAMD) Adaptive Behavior Scale — A scale that measures adaptive behavior.

APA — American Psychiatric Association.

autism — A rare developmental disability characterized by severe problems in communication, adaptive behavior, and social relationships. About four to five infants in every 10,000 born are autistic, and the ratio is about three or four males to one female. Because of its rarity, little is known about autism's possible causative or curative factors.

borderline intellectual functioning — Persons are categorized as borderline intellectual functioning when there are deficits in adaptive behavior associated with low intellectual functioning. These persons generally function fairly independently. According to the APA the IQ

range is 71-84. According to the AAMD the IQ range is 70-84. Differentiating mild mental retardation from borderline intellectual functioning requires careful consideration of all available information, including psychological test scores.

cerebral palsy — A developmental disability. The term is applied to a group of permanently disabling symptoms resulting from damage to the developing brain that may occur before, during, or after birth. It is a group of medical conditions, not a disease, characterized by motor dysfunction.

Crawford's Small Parts Dexterity Test — A test often used in vocational evaluation.

developmental disabilities — Handicapping conditions that first occur during the developmental period (before the age of 18), that are attributable to mental and/or physical impairments, that are likely to continue indefinitely, that result in substantial functional limitations, and that demand care, treatment, or services of extended or life-long duration.

developmental period — Refers to the years prior to age 18. Occurrence of mental retardation during the developmental period is one of three criteria (the other two being significantly subaverage general intellectual functioning and deficits or impairments in adaptive behavior) that must be met for a person to be diagnosed as mentally retarded.

dual diagnosis (DD) — Refers to people who are both mentally retarded and mentally disordered. May also be abbreviated as ED/MR (emotionally disturbed/mentally retarded).

dyslexia — Inability or severe difficulty in reading that cannot be attributed to deficits in visual acuity or general intellectual capacities. May be termed a developmental disability when of sufficient intensity or when diagnosed with another developmental disability as well. Otherwise termed as a learning disability.

educable mentally retarded (EMR) — An education classification used to describe individuals whose intellectual capacities fall into the mild mental retardation IQ range. EMR classes follow a traditional pattern but are smaller and use multiple specialized techniques to enhance learning accomplishments. May also be called Slow Learner Classes or Adjusted Learning Program (ALP).

epilepsy — A developmental disability when it occurs under 18 years of age. The term denotes a variety of disorders of the central nervous system characterized by abnormal electric-chemical discharges in the brain that are manifested in various forms of physical activities called seizures. Approximately 4,000,000 people in the United States have epilepsy. Although it is not curable, treatment is available through the use of drugs.

familial retardation — Retardation that has a strong tendency to occur in families over generations but that cannot be demonstrated to be hereditary. Possibly due to depressed cultural, emotional, and intellectual stimulation.

general intellectual functioning — An intelligence quotient (IQ) obtained by assessment with one or more of the individually administered general intelligence tests, such as the Stanford-Binet or the Wechsler Adult Intelligence Scale - Revised (WAIS-R).

Gunsburg Progress Assessment Chart — A scale that measures adaptive behavior.

habilitation — The process of determining the level of the retarded person's knowledge and skills and developing a plan that proceeds from that level toward higher levels of independence. It involves the pooling of resources and personnel to improve the person physically, mentally, socially, vocationally, and economically.

intelligence quotient (IQ) — A score used to describe the results of a standardized test of intelligence. An individual's score is statistically compared on tables with scores of other individuals of the person's same chronological age. IQ scores are highly reliable for predicting educational performance but less useful in predicting other personal characteristics or achievements. IQ tests tend to be culturally biased and examiners must take cultural/social differences into account in interpretation.

learning disability — A disorder characterized by difficulties in learning to read, write, or calculate in children of normal intellectual abilities. It is often attributable to perceptual-motor dysfunction or lag.

mental disorder (formerly called mental illness) — A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and is typically associated with either a painful symptom (distress) or impairment in one or more important areas of functioning (disability). The term infers that there is a behavioral, psychological, or biological dysfunction.

mental retardation — The essential features are (1) significantly subaverage general intellectual functioning, (2) resulting in, or associated with, deficits or impairments in adaptive behavior, (3) with onset during the developmental period (before the age of 18).

mental retardation professional — An individual who is trained in a particular field (social work, education, psychology, psychiatry, medicine, occupational therapy, physical therapy, speech pathology, audiology) and specializes in working with mentally retarded persons.

mentally retarded offenders (MRO's) — Mentally retarded persons who are accused or convicted of crimes.

mild mental retardation — Mildly mentally retarded persons make up the largest segment of mentally retarded persons — about 80 percent. Individuals with this level of mental retardation can develop social and communication skills during the preschool period, and they have minimal impairment in sensorimotor areas. Often they are not distinguishable from normal children until a later age. With adequate training, they can usually achieve social and vocational skills sufficient for minimum self-support. But they may need guidance and assistance when under unusual social or economic stress. Mild mental retardation is roughly equivalent to the education category "educable." In the ranking of mental retardation levels (mild, moderate, severe, and profound), it is the highest level.

Minnesota Multiphasic Personality Inventory (MMPI) — A personality assessment instrument used to describe personality characteristics of persons for purposes of diagnosis and treatment.

moderate mental retardation — Moderately mentally retarded persons make up 12 percent of the entire population of individuals with mental retardation. During the preschool period individuals with this level of mental retardation can talk or learn to communicate, but they may have poor awareness of social conventions. They can profit from training in social and occupational skills, and they may learn to travel alone in familiar places. They may be able to contribute to their own support by performing unskilled or semi-skilled work in competitive employment or in sheltered workshops. They

need supervision and guidance when under mild social or economic stress. Moderate mental retardation is roughly equivalent to the education category "trainable." In the ranking of mental retardation levels (mild, moderate, severe, and profound), it is the second highest level.

O'Connor Finger Dexterity Test — A test often used in vocational evaluation.

ORC — Ohio Revised Code.

profound mental retardation — Profoundly mentally retarded persons constitute less than one percent of all persons who are mentally retarded. During the preschool period these children display minimal capacity for sensorimotor functioning. A highly structured environment, with constant aid and supervision, is required. During the school-age period some further motor development may occur, and the children may respond to minimal or limited training in self-care. Some speech and further motor development may take place during the adult years. Very limited self-care may be possible in a highly structured environment with constant aid and supervision. In the ranking of mental retardation levels (mild, moderate, severe, and profound), it is the lowest level.

Purdue Pegboard Test — A test often used in vocational evaluation.

severe mental retardation — Severely mentally retarded persons make up seven percent of all persons who are mentally retarded. During the preschool period they may show poor motor and speech development. During the school-age period they may need speech therapy and self-care training. They are generally able to profit from pre-vocational training. During their adult years they may be able to perform simple work tasks under close supervision. In the ranking of mental retardation levels (mild, moderate, severe, and profound), it is the second lowest level.

sheltered workshop — A facility that provides occupational training and/or protective employment for people with developmental disabilities.

significant subaverage general intellectual functioning — An IQ of 67 or below on the Stanford-Binet or 69 or below on the WAIS-R. One of three criteria (the other two being deficits or impairments in adaptive behavior and onset during the developmental period) that must be met for a person to be diagnosed as mentally retarded.

Stanford-Binet — A standardized intelligence test given individually to evaluate intellectual and cognitive abilities. The test presupposes language skills. It is recognized as predictive of academic performance in relation to the age group against which one is tested.

Stromberg Dexterity Test — A test often used in vocational evaluation.

trainable mentally retarded (TMR) — An educational classification used to describe individuals whose intellectual capacities fall into the moderate mental retardation IQ range.

Vineland Social Maturity Scale — A test that measures adaptive behavior. It is given through an interview.

Wechsler Adult Intelligence Scale - Revised (WAIS-R) — A standardized intelligence test given individually to evaluate intellectual and cognitive abilities of adults. The full-scale test combines an assessment of verbal with performance scale scores and provides a profile of distinguishable mental traits.

Wells Concrete Directions Test — A test often used in vocational evaluation.

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