

How to Provide Dignity for Persons with Autism in the Criminal Justice Process

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In the past 50 years, autism spectrum disorder (ASD) has gone from a narrowly-defined, rare disorder of childhood onset to a well-publicized, advocated, and researched lifelong condition, recognized as fairly common and very heterogeneous. It results from early altered brain development and neural reorganization, and it is seen as a spectrum that can range from very mild to severe. There are important questions regarding the “underrecognition of ... symptoms [of autism] in some racial/ethnic groups, cultural differences influencing the decision to seek services, [and] socioeconomic disparities in access to services.”¹

Persons with autism typically have deficits in social communications (struggling with sustained social interactions and two-way conversations) nonverbal communications (making poor eye contact, having difficulty understanding body language and facial expressions), and in maintaining social relationships (often having difficulty in adjusting behaviors to match different social situations). They are perceived in lacking in both empathy and in remorse.

¹ Jon Baio et. al., *Prevalence of Autism Spectrum Disorder Among Children Aged 8 Years -- Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States, 2010* (Ctr. for Disease Control & Prevention, 2014), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm>

All of this makes it much more difficult for a person with autism in the criminal justice system, especially when their fate is to be decided by jurors who may either have no familiarity with autism or whose “familiarity” is based on a television stereotype. As a result, participation in such a system is often humiliating and shaming.

If we wish to remediate this situation, we must adopt a new approach to trials of persons with autism to provide dignity to the persons at risk, and to comply with principles of therapeutic jurisprudence. By way of example, judges must explain to jurors that they can not rely on their false “ordinary common sense” about what remorse “looks like” or what an empathetic person “looks like,” expert witnesses must be provided for the person at risk to explain to the fact-finder the reasons for otherwise-strange-seeming behavior, and greater care must be taken in selecting jurors for such trials. Only if remedies such as the are adopted will we be able to break the cycle of shame and humiliation that this population now faces.